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WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1364]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Board is amending Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that are effective on August 20, 2009. These amendments are being issued in the form of an interim final rule and primarily pertain to advance notices of rate increases and changes in terms and the time consumers are given to make their payments.

DATES: This interim final rule is effective August 20, 2009. Comments must be received on or before September 21, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R–1364, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Amy Burke or Benjamin K. Olson, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background and Implementation of the Credit Card Act

January 2009 Regulation Z and FTC Act Rules

On December 18, 2008, the Board adopted two final rules pertaining to open-end (not home-secured) credit. These rules were published in the **Federal Register** on January 29, 2009. The first rule makes comprehensive changes to Regulation Z's provisions applicable to open-end (not home-secured) credit, including amendments that affect all of the five major types of required disclosures: Applications and solicitations, account-opening disclosures, periodic statements, notices of changes in terms, and advertisements. *See* 74 FR 5244 (January 2009 Regulation Z Rule). The second is a joint rule published with the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA) under the Federal Trade Commission Act (FTC Act) to protect consumers from unfair acts or practices with respect to consumer credit card accounts. *See* 74 FR 5498 (January 2009 FTC Act Rule). The effective date for both rules is July 1, 2010.

On May 5, 2009, the Board published proposed clarifications and technical amendments to the January 2009 Regulation Z Rule in the **Federal Register**. *See* 74 FR 20784. The Board, the OTS, and the NCUA (collectively, the Agencies) concurrently published proposed clarifications and technical amendments to the January 2009 FTC Act Rule. *See* 74 FR 20804. In both cases, as stated in the **Federal Register,** these proposals were intended to clarify and facilitate compliance with the consumer protections contained in the January 2009 final rules and not to reconsider the need for—or the extent of—those protections. The comment period on both of these proposed sets of amendments ended on June 4, 2009. Where relevant, the Board has considered the comments submitted in preparing this interim final rule. The Board is still considering other comments received in response to the proposed amendments and intends to finalize those amendments, with revisions as appropriate, in connection with its next final rulemaking regarding credit cards. The fact that certain proposed amendments are not addressed in this **Federal Register** notice does not mean that they have been withdrawn. Rather, such amendments are still under consideration by the Board.

The Credit Card Act

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law. Public Law 111–24, 123 Stat. 1734 (2009). The Credit Card Act primarily amends the Truth in Lending Act (TILA) and establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans. Several of the provisions of the Credit Card Act are similar to provisions in the Board's January 2009 Regulation Z and FTC Act Rules, while other portions of the Credit Card Act address practices or mandate disclosures that were not addressed in the Board's rules.

The requirements of the Credit Card Act that pertain to credit cards or other open-end credit for which the Board has rulemaking authority become effective in three stages. First, provisions generally requiring that consumers receive 45 days' advance notice of interest rate increases and significant changes in terms (new TILA Section 127(i)) and provisions regarding the amount of time that consumers have to make payments (revised TILA Section 163) will become effective on August

20, 2009 (90 days after enactment of the Credit Card Act). A majority of the requirements under the Credit Card Act for which the Board has rulemaking authority, including, among other things, provisions regarding interest rate increases (revised TILA Section 171), over-the-limit transactions (new TILA Section 127(k)), and student cards (new TILA Sections 127(c)(8), 127(p), and 140(f)) become effective on February 22, 2010 (9 months after enactment).

Finally, two provisions of the Credit Card Act addressing the reasonableness and proportionality of penalty fees and charges (new TILA Section 149) and re-evaluation by creditors of rate increases (new TILA Section 148) are effective on August 22, 2010 (15 months after enactment). For these provisions that become effective on August 22, 2010, the statute requires the Board to issue final rules not later than February 22, 2010 (9 months after enactment). However, the Board notes that, while new TILA Section 148 is not effective until August 22, 2010, it applies to rate increases that have occurred since January 1, 2009. Specifically, new TILA Section 148 requires that, if a creditor has increased a rate on a credit card account since January 1, 2009 based on the credit risk of the consumer, market conditions, or other factors, the creditor must review the account at least once every six months and consider changes in such factors in subsequently determining whether to reduce that rate.[1]

Implementation Plan

The Board intends to implement the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. Accordingly, this interim final rule implements those provisions of the statute that are effective August 20, 2009, primarily addressing change-in-terms notice requirements and the amount of time that consumers have to make their payments. As discussed in more detail in II. Statutory Authority, the Board is issuing these rules in interim final form based on its determination that, given the short implementation period established by the Credit Card Act and the fact that similar rules were already the subject of notice-and-comment rulemaking, it would be impracticable and unnecessary to issue a proposal for public comment followed by a final rule. The Board intends to consider comments on this interim final rule in connection with its next rulemaking required by the Credit Card Act.

The Board intends to separately consider the remaining issues under the Credit Card Act and to finalize implementing regulations, in accordance with the timeline established by Congress, upon notice and after giving the public an opportunity to comment.

To the extent appropriate, the Board intends to use its January 2009 rules and the underlying rationale as the basis for its rulemakings under the Credit Card Act. The Board also intends to retain those portions of its January 2009 Regulation Z Rule that are unaffected by the Credit Card Act. The Board is not withdrawing any provisions of the January 2009 Regulation Z Rule or its January 2009 FTC Act Rule at this time. The Board anticipates that in connection with finalizing rules for those provisions of the Credit Card Act that are effective February 22, 2010, it will amend or withdraw those portions of the January 2009 rules that are inconsistent with the requirements of the Credit Card Act. In particular, the Board anticipates that all of the requirements in its January 2009 FTC Act Rule will be withdrawn from Regulation AA and moved into Regulation Z, consistent with Congress's approach of amending the Truth in Lending Act.[2] Finally, except as otherwise noted, the Board intends to consider comments received on the proposed clarifications and technical amendments that were published on May 5, 2009 and to incorporate final clarifications and amendments, to the extent appropriate, when it promulgates final rules in the second stage of its rulemaking.

II. Statutory Authority

General Rulemaking Authority

Section 2 of the Credit Card Act states that the Board ''may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act.'' This interim final rule implements §§ 101(a) and 106(b) of the Credit Card Act, which amend TILA. TILA mandates that the Board prescribe regulations to carry out its purposes and specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with TILA, or prevent circumvention or evasion of TILA. *See* 15 U.S.C. 1604(a).

Authority To Issue Interim Final Rules Without Notice and Comment

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires public notice before promulgation of regulations. *See* 5 U.S.C. 553(b). Unless notice or hearing is required by statute, however, the APA provides an exception ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). For the reasons discussed below, the Board finds that, with respect to this rulemaking, there is good cause to conclude that providing notice and an opportunity to comment is impracticable and unnecessary.

As an initial matter, neither the Credit Card Act nor TILA requires the Board to provide notice or a hearing with respect to this rulemaking. *See* Credit Card Act § 2; 15 U.S.C. 1604(a). TILA Section 105(c) does require notice and an opportunity for public comment with respect to the adoption of model disclosure forms and clauses but the Board is not adopting model disclosure forms or clauses in this interim final rule. 15 U.S.C. 1604(c). Moreover, even if the Board were adopting such forms or clauses, TILA Section 105(c) only requires notice and an opportunity to comment ''in accordance with [5 U.S.C. 553].'' Thus, the adoption of model disclosure forms and clauses is subject to the good cause exception in § 553(b)(B).

Furthermore, for purposes of implementing §§ 101(a) and 106(b) of the Credit Card Act, providing notice and an opportunity to comment within the timeframe mandated by Congress would be impracticable. Although most provisions of the Credit Card Act are effective 9 months after enactment, §§ 101(a) and 106(b) are effective in 90 days (*i.e.,* on August 20, 2009). This period does not provide sufficient time for the Board to:

- Prepare proposed regulations and publish them in the **Federal Register**;

[1] The Credit Card Act also requires the Board to conduct several studies and to make several reports to Congress, and sets forth differing time periods in which these studies and reports must be completed.

[2] *See also* OTS Memorandum for Chief Executive Officers: Credit CARD Act: Interest Rate Increases and Rules on Unfair Practices (issued July 13, 2009) (available at *http://files.ots.treas.gov/25312.pdf*); NCUA Press Release: Working with Other Regulators on Credit CARD Act and UDAP Rule (issued July 1, 2009) (available at *http://www.ncua.gov/news/press_releases/2009/MR09-0701.htm*).

• Provide a reasonable period for interested parties to review the proposal and prepare comments;

• Analyze the comments submitted; and

• Prepare the final regulations and publish them in the **Federal Register**.

Even if the Board were able to technically comply with § 553's notice-and-comment process within the allotted time, such a process would not comply with the purpose of the APA because interested parties would not have sufficient time to prepare well-researched comments and the Board would not have time to conduct a meaningful review and analysis of those comments. Furthermore, because the Board's regulations will provide creditors with guidance on how to comply with §§ 101(a) and 106(b) of the Credit Card Act, a notice-and-comment process would leave little or no time between the issuance of final regulations and the statutory effective date for creditors to adjust their procedures in order to comply. In contrast, the adoption of an interim final rule enables the Board to provide this guidance further in advance of the effective date, which provides creditors with more time to comply with the statutory provisions. As discussed in I. Background and Implementation of the Credit Card Act, interested parties will still have an opportunity to submit comments following issuance of the interim final rule, which the Board will consider when promulgating a non-interim final rule as part of a subsequent rulemaking implementing other provisions of the Credit Card Act.

Finally, notice and an opportunity to comment is unnecessary with respect to the implementation of §§ 101(a) and 106(b) of the Credit Card Act because these provisions are similar in most respects to rules recently adopted by the Board and other Agencies after notice and public comment. For example, as discussed in detail in III. Section-by-Section Analysis, § 101(a) of the Credit Card Act generally requires creditors to provide 45 days' advance notice of an increase in an annual percentage rate or other significant change in the terms of the cardholder agreement, a requirement that largely mirrors provisions in the January 2009 Regulation Z Rule recently adopted by the Board. *See* 12 CFR 226.9(c)(2) and (g),[3] 74 FR 5244, 5413–5415. Similarly, § 106(b) of the Credit Card Act requires creditors to mail or deliver periodic statements 21 days before payment is due, which is similar to a provision recently adopted by the Board and the other Agencies in the January 2009 FTC Act Rule. *See* 12 CFR 227.22, 74 FR 5498, 5560.[4] Prior to adopting these rules, the Board and the other Agencies received and considered more than 60,000 comments. Although the statutory provisions are not identical to the regulations in all respects, interested parties have already had an opportunity to comment on the core issues.[5] To the extent that the Board's interim final rule fails to anticipate new, material issues, interested parties will have the opportunity to raise those issues in their comments so that the Board can consider them in a subsequent rulemaking under the Credit Card Act.

Authority To Issue an Interim Final Rule With an Effective Date of August 20, 2009

Because §§ 101(a) and 106(b) of the Credit Card Act are effective on August 20, 2009,[6] the Board's interim final rule implementing those provisions is also effective on that date. The APA generally requires that rules be published not less than 30 days before their effective date. *See* 5 U.S.C. 553(d). As with the notice requirement, however, the APA provides an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' *Id.* § 553(d)(3). Notwithstanding the time saved by issuing an interim final rule without advance notice and the similarity of the new statutory provisions to regulations previously issued by the Board, 60 days may not be sufficient time for the Board to review the legislation carefully, revise its regulations for consistency with the Credit Card Act, and ensure that the revised regulations are published in the **Federal Register** 30 days before the August 20, 2009 effective date.[7] Accordingly, the Board finds that good cause exists to publish the interim final rule less than 30 days before the effective date.

Similarly, although 12 U.S.C. 4802(b)(1) generally requires that new regulations and amendments to existing regulations take effect on the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form (in this case, October 1, 2009), the Board has determined that—for the reasons discussed above—there is good cause for making the interim final rule effective on August 20. *See* 12 U.S.C. 4802(b)(1)(A) (providing an exception to the general requirement when ''the agency determines, for good cause published with the regulation, that the regulations should become effective before such time''). Although the Credit Card Act does not expressly require the Board to issue regulations implementing §§ 101(a) and 106(b) before October 1, Congress clearly intended creditors to be in compliance with those provisions on August 20. Accordingly, the Board believes that providing creditors with guidance regarding compliance with §§ 101(a) and 106(b) before October 1 is consistent with 12 U.S.C. 4802(b)(1)(C), which provides an exception to the general requirement when ''the regulation is required to take effect on a date other than the date determined under [12 U.S.C. 4802(b)(1)] pursuant to any other Act of Congress.''

Finally, TILA Section 105(d) provides that any regulation of the Board (or any amendment or interpretation thereof) requiring any disclosure which differs from the disclosures previously required by Chapters 1, 4, or 5 of TILA (or by any regulation of the Board promulgated thereunder) shall have an effective date no earlier than ''that October 1 which follows by at least six months the date of promulgation.'' However, even assuming that TILA Section 105(d) applies to the interim final rule, the Board believes that the specific provisions governing the effective dates for §§ 101(a) and 106(b) of the Credit Card Act override the general provision in TILA Section 105(d).

[3] For convenience, this supplementary information refers to provisions in the January 2009 Regulation Z and FTC Act Rules by citing to the Code of Federal Regulations as well as the **Federal Register**. The Board notes that because these provisions are not yet effective, they have not been incorporated into the existing Code of Federal Regulations.

[4] Although the Board, OTS, and NCUA adopted substantively identical rules under the FTC Act, each agency placed its rules in its respective part of title 12 of the Code of Federal Regulations. Specifically, the Board placed its rules in part 227, the OTS in part 535, and the NCUA in part 706. For simplicity, this supplementary information cites to the Board's rules and official staff commentary.

[5] The Board recognizes that there are two significant differences between the January 2009 rules and this interim final rule. First, the interim final rule permits a consumer to reject a rate increase or other significant change to the account terms in accordance with new TILA Section 127(i). Second, the mailing or delivery requirement for periodic statements in the interim final rule applies to all open-end consumer credit plans, while the analogous provision in the January 2009 FTC Act Rule applies only to credit card accounts.

[6] *See* Credit Card Act § 3.

[7] The date on which the Board's notice is published in the **Federal Register** depends on a number of variables that are outside the Board's control, including the number and size of other notices submitted to the **Federal Register** prior to the Board's notice.

III. Section-by-Section Analysis

Section 226.5 General Disclosure Requirements

5(b) Time of Disclosures

As amended by the Credit Card Act, TILA Section 163 generally prohibits a creditor from treating a payment as late or imposing additional finance charges unless the creditor mailed or delivered the periodic statement at least 21 days before the payment due date and the expiration of any period within which any credit extended may be repaid without incurring a finance charge (*i.e.,* a ''grace period''). *See* Credit Card Act § 106(b). Unlike most of the Credit Card Act's provisions, the amendments to TILA Section 163 apply to all open-end consumer credit plans rather than just credit card accounts.[8] As discussed below, the Board has implemented amended TILA Section 163 by revising § 226.5(b)(2)(ii) and the accompanying official staff commentary.[9]

Currently, TILA Section 163 requires creditors to send periodic statements at least 14 days before the expiration of the grace period (if any), unless prevented from doing so by an act of God, war, natural disaster, strike, or other excusable or justifiable cause (as determined under regulations of the Board). 15 U.S.C. 1666b. The current version of Regulation Z, however, applies the 14-day requirement even when the consumer does not receive a grace period. Specifically, current § 226.5(b)(2)(ii) requires that creditors mail or deliver periodic statements 14 days before the date by which payment is due for purposes of avoiding not only finance charges as a result of the loss of a grace period but also any charges other than finance charges (such as late fees). *See also* comment 5(b)(2)(ii)–1.

In the January 2009 FTC Act Rule, the Board and the other Agencies prohibited institutions from treating payments on consumer credit card accounts as late for any purpose unless the institution provided a reasonable amount of time for consumers to make payment. *See* 12 CFR 227.22(a), 74 FR 5560; *see also* 74 FR 5508–5512. This rule included a safe harbor for institutions that adopt reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date. *See* 12 CFR 227.22(b)(2), 74 FR 5560. The 21-day safe harbor was intended to allow seven days for the periodic statement to reach the consumer by mail, seven days for the consumer to review their statement and make payment, and seven days for that payment to reach the institution by mail. However, to avoid any potential conflict with the 14-day requirement in TILA Section 163(a), the rule expressly stated that it would not apply to any grace period provided by an institution. *See* 12 CFR 227.22(c), 74 FR 5560.

5(b)(2) Periodic Statements

5(b)(2)(ii) Mailing or Delivery

The Credit Card Act's amendments to TILA Section 163 codify aspects of current § 226.5(b)(2)(ii) as well as the provision in the January 2009 FTC Act Rule regarding the mailing or delivery of periodic statements. Specifically, like current § 226.5(b)(2)(ii), amended TILA Section 163 applies the mailing or delivery requirement to both the expiration of the grace period and the payment due date. In addition, similar to the January 2009 FTC Act Rule, amended TILA Section 163 adopts 21 days as the appropriate time period between the date on which the statement is mailed or delivered to the consumer and the date on which the consumer's payment must be received by the creditor to avoid adverse consequences.

Rather than establishing an absolute requirement that periodic statements be mailed 21 days in advance of the payment due date, amended TILA Section 163(a) codifies the same standard adopted by the Board and the other Agencies in the January 2009 FTC Act Rule, which requires creditors to adopt ''reasonable procedures designed to ensure'' that statements are mailed or delivered at least 21 days before the payment due date. Notably, however, the 21-day requirement for grace periods in amended TILA Section 163(b) does not include similar language regarding ''reasonable procedures.'' Because the payment due date generally coincides with the expiration of the grace period, the Board believes that it will facilitate compliance to apply a single standard to both circumstances. The ''reasonable procedures'' standard recognizes that, for issuers mailing hundreds of thousands of periodic statements each month, it would be difficult if not impossible to know whether a specific statement is mailed or delivered on a specific date. Furthermore, applying different standards could encourage creditors to establish a payment due date that is different from the date on which the grace period expires, which could lead to consumer confusion. Accordingly, the Board is amending § 226.5(b)(2)(ii) to require that creditors adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date *and* the expiration of the grace period. In doing so, the Board relies on its authority under TILA Section 105(a) to make adjustments that are necessary or proper to effectuate the purposes of TILA and to facilitate compliance therewith. *See* 15 U.S.C. 1604(a).

For clarity, the Board also amends § 226.5(b)(2)(ii) to define ''grace period'' as ''a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.'' This definition is consistent with the definition of grace period adopted by the Board in its January 2009 Regulation Z Rule. *See* §§ 226.5a(b)(5), 226.6(b)(2)(v), 74 FR 5404, 5407; *see also* 74 FR 5291–5294, 5310.

Finally, amended TILA Section 163 deletes current Section 163(b), which states that the 14-day mailing requirement does not apply ''in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of [the] periodic statement within the time period specified * * * because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board.'' 15 U.S.C. 1666b(b). The Board believes that the Credit Card Act's removal of this language is consistent with the adoption of a ''reasonable procedures'' standard insofar as a creditor's procedures for responding to any of the situations listed in current TILA Section 163(b) will now be evaluated for reasonableness in addressing those situations. Accordingly, the Board has removed the language implementing current TILA Section 163(b) from footnote 10 to § 226.5(b)(2)(ii).[10]

[8] Specifically, while most provisions in the Credit Card Act apply to ''credit card account[s] under an open end consumer credit plan'' (*e.g.,* § 101(a)), amended TILA Section 163—like current TILA Section 163—applies to ''open end consumer credit plan[s].''

[9] The January 2009 Regulation Z Rule revised aspects of § 226.5(b)(2)(ii). However, because those revisions are not effective until July 1, 2010, this interim final rule amends the version of § 226.5(b)(2)(ii) that is currently in effect. Accordingly, when this supplementary information refers to ''current'' or ''existing'' paragraphs of §§ 226.5 or 226.9, it refers to the version that is currently in effect, not the version adopted in the Board's January 2009 Regulation Z Rule, which is effective July 1, 2010.

[10] Both current and amended TILA Section 163 require that the periodic statement include the date on which the grace period will expire and the amount on which the finance charge will be based if the consumer does not pay the balance in full prior to expiration of the grace period. The Board notes that current § 226.7(e) and (j) require disclosure of this information. In addition, the 21-

The Board is adopting a new comment 5(b)(2)(ii)–1, which clarifies that, under the ''reasonable procedures'' standard, a creditor is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. Instead, a creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires. For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle. The Board and the other Agencies adopted a similar comment in the January 2009 FTC Act Rule. *See* 12 CFR 227.22 comment 22(b)–1, 74 FR 5511, 5561.

The Board is deleting current comment 5(b)(2)(ii)–1 because it refers to the 14-day rule for grace periods and is therefore no longer consistent with § 226.5(b)(2)(ii). To the extent that current comment 5(b)(2)(ii)–1 clarifies that § 226.5(b)(2)(ii) applies in circumstances where the consumer is not eligible or ceases to be eligible for a grace period, it is no longer necessary because that requirement is reflected in amended § 226.5(b)(2)(ii) and elsewhere in the amended commentary.

The Board is also adopting a new comment 5(b)(2)(ii)–2, which clarifies that treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date. However, because amended TILA Section 163 (like current TILA Section 163) does not require creditors to provide a grace period, the comment also clarifies that, when an account is not eligible or ceases to be eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late for purposes of § 226.5(b)(2)(ii).[11] The Board and the other Agencies adopted a similar comment in the January 2009 FTC Act Rule. *See* 12 CFR 227.22 comment 22(a)–1, 74 FR 5510, 5561.

The Board is deleting current comment 5(b)(2)(ii)–2, which clarifies that the emergency circumstances exception in footnote 10 does not extend to the failure to provide a periodic statement because of computer malfunction. As discussed above, footnote 10 is based on current TILA Section 163(b), which has been repealed.

The Board is adopting a new comment 5(b)(2)(ii)–3, which clarifies that, for purposes of § 226.5(b)(2)(ii), ''payment due date'' generally means the date by which the creditor requires the consumer to make the required minimum periodic payment in order to avoid that payment being treated as late for any purpose. However, the comment also addresses the meaning of payment due date in two circumstances where a late payment or other fee may not be assessed until a date that is later than the date on which payment is due.

First, the comment notes that some creditors provide an additional period of time after the contractual due date during which a late payment fee will not be assessed. This period—which is sometimes referred to as a ''courtesy period''— may be set forth in the account agreement (as with some home equity plans subject to the requirements of § 226.5b) or may be provided as an informal policy or practice (as with some credit card accounts). Regardless of whether the courtesy period is mandated by state law, new comment 5(b)(2)(ii)–3 clarifies that, for purposes of § 226.5(b)(2)(ii), the payment due date is the due date according to the legal obligation between the parties, not the end of the additional ''courtesy'' period.

Second, the comment notes that some state or other laws require that a certain number of days must elapse following a due date before a late payment or other fee may be imposed. As with courtesy periods, the comment clarifies that in these circumstances the payment due date for purposes of § 226.5(b)(2)(ii) is the due date according to the legal obligation between the parties, not the date before which state law prohibits imposition of a late payment or other fee.

The Board is adopting comment 5(b)(2)(ii)–4, which clarifies the definition of ''grace period'' in § 226.5(b)(2)(ii). Specifically, this comment clarifies that a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of § 226.5(b)(2)(ii). This comment also clarifies that a courtesy period is not a grace period for purposes of § 226.5(b)(2)(ii).

Current comment 5(b)(2)(ii)–3 provides that, when a consumer asks to pick up his or her periodic statements, the creditor may permit—but not require—the consumer to do so, provided that statements are made available 14 days before expiration of the grace period. For organizational purposes, the Board has redesignated this comment as comment 5(b)(2)(ii)–4. In addition, the Board has revised the comment for clarity and for consistency with the new 21-day requirement.

Finally, current comment 5(b)(2)(ii)–4 contains a cross-reference to comment 7–3.iv., which provides examples of grace periods in the context of a deferred interest transaction. For organizational purposes, the Board has redesignated this comment as comment 5(b)(2)(ii)–6. In addition, the Board has made a technical amendment to this comment without intended substantive change and revised comment 7–3.iv. for consistency with the new 21-day requirement.[12]

Implementation

As discussed in I. Background and Implementation of the Credit Card Act, the effective date for revised TILA Section 163 (as amended by the Credit Card Act) is August 20, 2009. In order to comply with revised § 226.5(b)(2)(ii) (which implements revised TILA Section 163), creditors must have in

day mailing requirement in amended TILA Section 163(a) is tied to the provision of a periodic statement that includes ''the information required by section 127(b).'' Although §§ 201 and 202 of the Credit Card Act amend TILA Section 127(b), those provisions are not effective until February 22, 2010. Accordingly, until such time as the amendments to TILA Section 127(b) are effective, the Board interprets amended TILA Section 163(a) to refer to the current version of TILA Section 127(b).

[11] The Board notes, however, that § 102(a) of the Credit Card Act creates a new TILA Section 127(j), which addresses the ability of creditors to charge interest from the date of the transaction in certain circumstances. However, unlike the amendments to Section 163, this provision is effective 9 months after enactment and will be implemented by the Board in a separate rulemaking. *See* Credit Card Act § 3.

[12] In the January 2009 FTC Act Rule, the Board and the other Agencies adopted comment 22(b)–3, which clarified that an institution that only provided periodic statements electronically and only accepted payments electronically could comply with the general requirement in 12 CFR 227.22(a) to provide a reasonable amount of time to make payment without providing periodic statements 21 days before the payment due date. *See* 74 FR 5561. Under amended TILA Section 163, however, the 21-day requirement applies regardless of how periodic statements are provided and payments are made.

place on August 20 reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date and the date on which any grace period expires. That is, the relevant date for purposes of determining when a creditor must comply with revised § 226.5(b)(2)(ii) is the date on which the periodic statement is mailed or delivered, not the due date or grace period expiration date reflected on the statement. Thus, if a periodic statement is mailed or delivered on August 20, the creditor must have reasonable procedures designed to ensure that the payment due date and the grace period expiration date are not earlier than September 10. However, if a periodic statement is mailed or delivered on August 19, this new requirement does not apply to that statement.

The Board believes that this is the appropriate reading of the 90-day implementation period in the Credit Card Act. Although the Credit Card Act could be construed to require creditors to have reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before any payment due date or grace period expiration date that falls on or after August 20, this reading would create uncertainty regarding compliance with the amendments to TILA Section 163 by requiring creditors to mail or deliver periodic statements in accordance with revised TILA Section 163 and § 226.5(b)(2)(ii) prior to the effective date for those provisions. Accordingly, for clarity and consistency, the Board believes the better reading of the Credit Card Act is that creditors must begin to comply with amended TILA Section 163 (as implemented in amended § 226.5(b)(2)(ii)) with respect to periodic statements mailed or delivered on or after August 20, 2009.

Revised § 226.5(b)(2)(ii) applies to credit card accounts as well as all other open-end consumer credit plans. The Board understands that, with respect to open-end consumer credit plans other than credit cards, it may be difficult for some creditors to update their systems to produce periodic statements by August 20, 2009 that disclose payment due dates and grace period expiration dates (if applicable) that are consistent with the 21-day requirement in revised § 226.5(b)(2)(ii). As a result, it is possible that, for a short period of time after August 20, some periodic statements for open-end consumer credit plans other than credit cards may disclose payment due dates and grace period expiration dates (if applicable) that are technically inconsistent with the interim final rule. In these circumstances, the creditor may remedy this technical issue by prominently disclosing elsewhere on or with the periodic statement that the consumer's payment will not be treated as late for any purpose if received within 21 days after the statement was mailed or delivered. Under no circumstances does revised § 226.5(b)(2)(ii) permit a creditor to treat a payment as late for any purpose if that payment is received within 21 days after mailing or delivery of the periodic statement.

Section 226.7 Periodic Statement

As discussed above, the Board has revised comment 7–3.iv. for consistency with the amendments to § 226.5(b)(2)(ii), which require that periodic statements be mailed or delivered 21 days before the payment due date and the expiration of any grace period. The revisions to this comment in the January 2009 Regulation Z Rule and the revisions proposed in May 2009 will be addressed in a subsequent rulemaking. *See* 74 FR 5320, 5476; 74 FR 20786, 20798

Section 226.9 Subsequent Disclosure Requirements

The Board is adopting revisions to § 226.9(c) and is adopting new § 226.9(g) and (h) to implement new TILA Section 127(i), enacted as part of the Credit Card Act. New TILA Section 127(i) generally requires that creditors provide consumers with 45 days' advance notice of rate increases and other significant changes to the terms of their credit card account agreements. Credit Card Act § 101(a)(1). Section 127(i) also requires change-in-terms notices to contain a disclosure of a consumer's right to cancel the account, pursuant to the Board's rules, prior to the effective date of the rate increase or change. Section 127(i) is effective on August 20, 2009, 90 days after enactment of the Credit Card Act. As discussed below, the amendments to § 226.9(c) and (g) adopted in this interim final rule in large part parallel the requirements adopted in the Board's January 2009 Regulation Z Rule, with changes to conform to new TILA Section 127(i).

However, consistent with the staged approach to implementations outlined above in I. Background and Implementation of the Credit Card Act, several requirements that were included in § 226.9(c) and (g) of the Board's January 2009 Regulation Z Rule are not included in this interim final rule. Compliance with these requirements is not mandated by the Credit Card Act, and therefore this interim final rule does not require compliance with these requirements on August 20, 2009. For example, this interim final rule does not require that advance notices of changes in terms or the imposition of penalty rates pursuant to § 226.9(c) and (g) comply with certain tabular formatting requirements contained in the January 2009 Regulation Z Rule. However, the Board is not withdrawing these or any other requirements of the January 2009 Regulation Z Rule at this time. The implementation of, and any changes to, the January 2009 Regulation Z Rule and January 2009 FTC Act Rule necessary to conform with the Credit Card Act will be addressed in connection with the next stage of the Board's implementing regulations.

Accordingly, because the January 2009 Regulation Z Rule is not effective until July 1, 2010, the Board has based the amendments to § 226.9(c) in this interim final rule on the text of existing § 226.9(c) rather than on the version of § 226.9(c) included in the January 2009 Regulation Z Rule. Similarly, new § 226.9(g) is based on the January 2009 Regulation Z Rule but does not implement all of the formatting and content requirements included in the January 2009 rulemaking.

In addition, the Board is not including model forms or model clauses for advance notices of rate increases or changes in terms in this interim final rule, for several reasons. First, the formatting and content requirements of the January 2009 Regulation Z Rule are not yet effective, and therefore any model clause or form included with this interim final rule would be subject to further revision for conformity with that rule. Second, as discussed below, the Credit Card Act also imposes additional content requirements for change-in-terms notices, several of which are not effective until February 22, 2010. The Board intends to finalize new model forms in the next stage of its rulemaking under the Credit Card Act that comply with all of these new requirements simultaneously.

226.9(c) Change in Terms

Credit Card Act [13]

New TILA Section 127(i)(1) generally requires creditors to provide consumers

[13] For convenience, this section summarizes all of the provisions of the Credit Card Act related to advance notices of changes in terms and rate increases. Consistent with the approach it took in the January 2009 Regulation Z Rule, the Board is implementing the advance notice requirements applicable to contingent rate increases set forth in the cardholder agreement in a separate section (§ 226.9(g)) from those advance notice requirements applicable to changes in the cardholder agreement (§ 226.9(c)). The distinction between these types of changes is that § 226.9(g) addresses changes in a rate being applied to a consumer's account

with a written notice of an annual percentage rate increase at least 45 days prior to the effective date of the increase, for credit card accounts under an open-end consumer credit plan. Credit Card Act § 101(a)(1). The statute establishes several exceptions to this general requirement. Credit Card Act § 101(a)(1) and (b)(2). The first exception applies when the change is an increase in an annual percentage rate upon expiration of a specified period of time, provided that prior to commencement of that period, the creditor clearly and conspicuously disclosed to the consumer the length of the period and the rate that would apply after expiration of the period. The second exception applies to increases in variable annual percentage rates that change according to operation of a publicly available index that is not under the control of the creditor. Finally, a third exception applies to rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, provided that prior to the commencement of such arrangement the creditor clearly and conspicuously disclosed to the consumer the terms of the arrangement, including any increases due to completion or failure.

In addition to the rules in new TILA Section 127(i)(1) regarding rate increases, new TILA Section 127(i)(2) establishes an additional 45-day advance notice requirement for significant changes, as determined by rule of the Board, in the terms (including an increase in any fee or finance charge) of the cardholder agreement between the creditor and the consumer. Credit Card Act § 101(a)(1).

New TILA Section 127(i)(3) also establishes an additional content requirement for notices of interest rate increases or significant changes in terms provided pursuant to new TILA Section 127(i). Such notices are required to contain a brief statement of the consumer's right to cancel the account, pursuant to rules established by the Board, before the effective date of the rate increase or other change disclosed in the notice. In addition, new TILA Section 127(i)(4) states that closure or cancellation of an account pursuant to the consumer's right to cancel does not constitute a default under the existing cardholder agreement, and does not trigger an obligation to immediately repay the obligation in full or through a method less beneficial than those listed in revised TILA Section 171(c)(2). (The disclosure associated with the right to cancel is discussed in the section-by-section analysis to § 226.9(c) and (g), while the substantive rules regarding this new right are discussed in the section-by-section analysis to § 226.9(h).)

The Board notes that there are additional provisions of the Credit Card Act that may impact the content of change-in-terms notices, and the types of changes that are permitted pursuant to a change-in-terms notice, that are not effective until February 22, 2010. For example, revised TILA Section 171(a) generally prohibits, subject to several exceptions, increases in annual percentage rates and other finance charges applicable to outstanding balances. In addition, revised TILA Section 171(b) and new TILA Section 148(b) will require, for certain types of rate increases, that the advance notice state the reason for a rate increase. Finally, for penalty rate increases applied to outstanding balances when the consumer fails to make a minimum payment within 60 days after the due date, as permitted by revised TILA Section 171(b)(4), a creditor will be required to terminate the penalty rate increase if the consumer makes the subsequent six minimum payments on time. Consistent with the Board's approach to implementing the changes contained in the Credit Card Act discussed in I. Background and Implementation of the Credit Card Act, these changes will be addressed in the next stage of the Board's rulemaking.

Scope of 45-Day Advance Notice Rules

The Board is using its authority under TILA Section 105(a) and § 2 of the Credit Card Act to interpret the term ''credit card account under an open-end consumer credit plan,'' as that term is used in new TILA Section 127(i), not to include accounts that are home-equity lines of credit (HELOCs) subject to § 226.5b, even if those accounts may be accessed by a credit card device. Thus, the provisions in new TILA Section 127(i) would not apply to HELOC accounts. This is consistent with the Board's historical treatment of HELOC accounts accessible by a credit card under TILA; for example, the credit and charge card application and solicitation disclosure requirements under § 226.5a expressly do not apply to home-equity plans accessible by a credit card that are subject to § 226.5b. The Board is currently engaged in reviewing the rules applicable to HELOCs as part of its staged review of all of Regulation Z and will consider any appropriate revisions to the change-in-terms requirements for HELOCs in connection with that review.

January 2009 Regulation Z Rule

The Board's interim final rule to implement the advance notice requirements of new TILA Section 127(i) draws upon information considered by the Board in adopting its January 2009 Regulation Z Rule. Section 226.9(c) of the Board's January 2009 Regulation Z Rule, similar to new TILA Section 127(i), requires 45 days' advance written notice of changes in key account terms. The terms for which 45 days' advance written notice of changes is required under the January 2009 Regulation Z Rule are the same terms that the Board required to be disclosed in the new account-opening table required for open-end (not home-secured) credit pursuant to § 226.6(b)(1) and (b)(2) of the January 2009 Regulation Z Rule. The terms for which advance notice of changes is required under the January 2009 Regulation Z Rule are those that the Board determined, in part based on its consumer testing, to be of the greatest importance to consumers, including annual percentage rates and other key charges, such as transaction fees and penalty fees.

As discussed in the supplementary information to § 226.9(g) in the January 2009 Regulation Z Rule, the Board also adopted a new § 226.9(g) to require 45 days' advance notice of increases in the rates applicable to a consumer's delinquency or default, or as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit. New § 226.9(g) of the January 2009 Regulation Z Rule was intended to complement § 226.9(c) by requiring advance notice of rate increases that, while not technically changes in the terms of the consumer's account agreement, may still come as a costly surprise to the consumer.

9(c)(1) Rules Affecting Home-Equity Plans and Open-End Plans That Are Not Credit Card Accounts

The interim final rule preserves, in § 226.9(c)(1) and associated staff commentary, the existing change-in-terms notice requirements for home-equity plans and other open-end plans that are not credit card accounts. These rules are substantively identical to the current rules under § 226.9(c), except for several technical and renumbering changes.

The Board notes that open-end (not home-secured) lines of credit that are not credit card accounts will be subject

consistent with the existing terms of the cardholder agreement, while § 226.9(c) addresses changes in the underlying terms of the agreement.

to the revised change-in-terms notice requirements contained in the January 2009 Regulation Z Rule when that rule becomes effective. In particular, changes made in January 2009 to § 226.9(c) and (g) have not been withdrawn. However, the January 2009 Regulation Z Rule is not yet effective, and unsecured lines of credit that are not credit card accounts are not subject to the advance notice requirements in the Credit Card Act. Therefore the existing rules have been preserved for such lines of credit for the period between the effective date of this interim final rule and the date the January 2009 Regulation Z Rule becomes effective. Thus, creditors offering open-end (not home-secured) lines of credit that are not credit card accounts may continue to comply with the existing change-in-terms notice requirements, which have been adopted in this interim final rule as renumbered § 226.9(c)(1).

The Board notes that it also is currently reviewing those portions of Regulation Z that pertain to home-equity lines of credit, and the applicable notice requirements for such products may be amended in the course of that rulemaking.

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

9(c)(2)(i) Changes Where Written Advance Notice Is Required

Section § 226.9(c)(2) sets forth the change-in-terms notice requirements for credit card accounts that are not home-secured. Paragraph (c)(2)(i) sets forth the general rule for when change-in-terms notices must be provided, and states that a creditor must provide a written notice of a significant change to an account term as described in paragraph (c)(2)(ii) or an increase in the required minimum periodic payment, in each case at least 45 days' prior to the effective date of the change, unless an exception in paragraph (c)(2)(v) applies. Consistent with current § 226.9(c), however, the 45-day advance notice requirement does not apply if the consumer has agreed to the particular change; in that case, the notice need only be given before the effective date of the change.

9(c)(2)(ii) Significant Changes in Account Terms

Paragraph (c)(2)(ii) identifies significant changes in account terms for which 45 days' advance notice is required. This paragraph implements both new TILA Sections 127(i)(1) and (i)(2). Consistent with new TILA Section 127(i)(1), § 226.9(c)(2)(ii)(A) defines changes in annual percentage rates as significant changes. Furthermore, § 226.9(c)(2)(ii)(A) is broad and includes the rates applicable to purchases, cash advances, and balance transfers, as well as any discounted initial rate, premium initial rate, or penalty rate that may apply to the account. Accordingly, § 226.9(c)(2)(ii)(A) is intended to cover changes in contract terms that result in increases in all types of annual percentage rates; notices of increases in applicable annual percentage rates due to the application of existing provisions in the cardholder agreement are covered by § 226.9(g), which is discussed elsewhere in this section-by-section analysis.

Paragraphs (c)(2)(ii)(B) through (c)(2)(ii)(L) set forth the remaining terms for which a change requires 45 days' advance notice, pursuant to the Board's authority under new TILA Section 127(i)(2) to determine by rule what constitutes a ''significant change'' in terms. The list in paragraphs (c)(2)(ii)(B) through (c)(2)(ii)(L) mirrors the list of terms required to be disclosed in the account-opening table required pursuant to § 226.6(b)(1) and (b)(2) of the January 2009 Regulation Z Rule. This list comprises those terms that, based on the Board's consumer testing, are those that are the most important to consumers. This list includes the types of fees that a consumer should be aware of prior to use of the account, such as key penalty fees, transaction fees, and fees imposed for the issuance or availability of an open-end credit plan, and of which the Board believes a consumer would most benefit from receiving 45 days' advance notice of a change. This list also includes additional terms, such as the grace period applicable to the account and the balance computation method, that are not fees but that can have a significant impact on the cost of credit to a consumer.

The Board notes that a broader interpretation of what constitutes a significant change in terms could result in anomalous results that would not necessarily benefit consumers. There are some fees, such as fees for expedited delivery of a replacement card, that it may not be useful to disclose long in advance of when they become relevant to the consumer. For such fees, the Board believes that a more flexible approach, consistent with that adopted in the January 2009 Regulation Z Rule is appropriate. Thus, if a consumer calls to request an expedited replacement card, the consumer could be informed of the amount of the fee in the telephone call in which the consumer requests the card. Otherwise, the consumer would have to wait 45 days from receipt of a change-in-terms notice to be able to order an expedited replacement card, which would likely negate the benefit to the consumer of receiving the expedited delivery service.

9(c)(2)(iii) Changes Not Covered by § 226.9(c)(2)(i)

Accordingly, the Board is adopting § 226.9(c)(2)(iii) to clarify how issuers generally must disclose changes in terms that are not subject to the disclosure requirements in § 226.9(c)(2)(i), *i.e.,* that are not significant changes as described in § 226.9(c)(2)(ii) or an increase in the required minimum payment. New § 226.9(c)(2)(iii) generally mirrors the substance of § 226.9(c)(2)(ii) of the January 2009 Regulation Z Rule, and provides that creditors may disclose changes in those terms either by giving 45 days' advance written notice, or by providing notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure of the charge.

9(c)(2)(iv) Disclosure Requirements—Changes to Terms Described in Paragraph (c)(2)(i)

New § 226.9(c)(2)(iv) sets forth the disclosure requirements for change-in-terms notices required to be given pursuant to § 226.9(c)(2)(i). Paragraphs (c)(2)(iv)(A)–(c)(2)(iv)(C) require the notice to provide a description of the changes, state that changes are being made to the account, and state the date the changes will become effective. Except when the change is an increase in the required minimum payment, paragraph (c)(2)(iv)(D) generally requires the notice to inform the consumer of his or her right to reject a change in terms disclosed pursuant to § 226.9(c)(2) prior to the effective date of the change unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment. The notice also is required to disclose instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection. If applicable, issuers also are required to disclose that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

The Board is not requiring that consumers receive a notice of their right to reject the impending changes to the account when they are notified, pursuant to § 226.9(c)(2)(i), of an increase in the required minimum

payment. The right to reject minimum payment increases appears to be inconsistent with the intent of other portions of the Credit Card Act. In the Credit Card Act, Congress amended TILA Section 127(b)(11) to require enhanced disclosures regarding the impact of making only minimum payments, specifically to warn consumers that making only minimum payments can increase the amount of interest they pay and the time it takes to repay balances. Permitting a consumer to reject an increase in the minimum payment could potentially subject that consumer to increased interest charges and a longer amortization period, if the consumer continues to make only the minimum payment.

As discussed elsewhere in the section-by-section analysis to § 226.9(c), the Board notes that the January 2009 Regulation Z Rule imposes additional formatting and content requirements on change-in-terms notices. While those requirements are not included in this interim final rule, the Board will address them in a later stage of rulemaking required by the Credit Card Act, and intends to amend those requirements prior to their effective date to the extent necessary to conform with the requirements of the Credit Card Act.

9(c)(2)(v) Notice Not Required

The Board is adopting § 226.9(c)(2)(v) to set forth the exceptions to the general change-in-terms notice requirements for credit card accounts that are not home-secured. Paragraph (c)(2)(v)(A) retains several exceptions that are in current § 226.9(c), including charges for documentary evidence, reductions of finance charges, suspension of future credit privileges (except as provided in § 226.9(c)(vi), discussed below), termination of an account or plan, or when the change results from an agreement involving a court proceeding. The Board is not including these changes in the set of ''significant changes'' giving rise to notice requirements pursuant to new TILA Section 127(i)(2). The Board believes that 45 days' advance notice is not necessary for these changes, which are not of the type that generally result in the imposition of a fee or other charge on a consumer's account that could come as a costly surprise. In addition, the Board believes that for safety and soundness reasons, issuers generally have a legitimate interest in suspending credit privileges or terminating an account or plan when a consumer's creditworthiness deteriorates, and that 45 days' advance notice of these types of changes therefore would not be appropriate.

New § 226.9(c)(2)(v)(B) sets forth an exception contained in the Credit Card Act for increases in annual percentage rates upon the expiration of a specified period of time, provided that prior to the commencement of that period, the creditor disclosed to the consumer clearly and conspicuously in writing the length of the period and the annual percentage rate that would apply after that period. In addition, in order to fall within this exception, the annual percentage rate that applies after the period ends may not exceed the rate previously disclosed. The exception generally mirrors the statutory language, except that the Board has expressly provided, consistent with the general standard for Regulation Z disclosures under Subpart B that the disclosure of the period and annual percentage rate that will apply after the period is required to be in writing. *See* § 226.5(a)(1).

The Board is adopting a new comment 9(c)(2)(v)–6 to clarify that an issuer offering a deferred interest or similar program may utilize the exception in § 226.9(c)(2)(v)(B). The comment also provides examples of how the required disclosures can be made for deferred interest or similar programs. The Board believes that the application of § 226.9(c)(2)(v)(B) to deferred interest arrangements is consistent with the Credit Card Act and that this clarification is necessary in order to ensure that this interim final rule does not have unintended adverse consequences for deferred interest promotions.

As discussed in the supplementary information to § 226.9(h), the Board is interpreting the consumer's right to cancel referenced in new TILA Section 127(i)(3) as a right to reject the changes disclosed in the notice. If issuers that offer deferred interest plans were unable to use the exception in § 226.9(c)(2)(v)(B), they would be required to give consumers 45 days' advance notice before the end of the deferred interest period, as well as the right to reject the imposition of interest charges on the deferred interest balance. For those consumers who rejected the change, the issuer would in effect be required to extend credit at a zero percent interest rate for the life of the balance. This would create a strong disincentive to offering deferred interest programs. The Board does not believe that this was the intent of the Credit Card Act, and specifically notes that amended TILA Section 164 (effective February 22, 2010) creates a special payment allocation rule to facilitate deferred interest arrangements. The Board believes therefore, that the appropriate reading of the exception implemented in § 226.9(c)(2)(v)(B) is that it also applies to deferred interest or similar programs.

Similarly, § 226.9(c)(2)(v)(C) also sets forth an exception contained in the Credit Card Act, for increases in variable annual percentage rates in accordance with a credit card agreement that provides for a change in the rate according to operation of an index that is not under the control of the creditor and is available to the general public. The Board believes that even absent this express exception, such a rate increase would not generally be a change in the terms of the cardholder agreement that gives rise to the requirement to provide 45 days' advance notice, because the index, margin, and frequency with which the annual percentage rate will vary will all be specified in the cardholder agreement in advance. However, in order to clarify that 45 days' advance notice is not required for a rate increase that occurs due to adjustments in a variable rate tied to an index beyond the issuer's control, the Board has expressly included § 226.9(c)(2)(v)(C) in this interim final rule.

Finally, § 226.9(c)(2)(v)(D) implements a statutory exception for increases in rates due to the completion of a workout or temporary hardship arrangement provided that the annual percentage rate applicable to a category of transactions following the increase does not exceed the rate that applied prior to the commencement of the workout or temporary hardship arrangement. The exception is also conditioned on the issuer's having clearly and conspicuously disclosed, prior to the commencement of the arrangement, the terms of the arrangement (including any such increases due to such completion). The Board notes that the statutory exception applies in the event of either completion of, or failure to comply with, the terms of such a workout or temporary hardship arrangement. The exception that applies to completion of an arrangement is implemented in § 226.9(c)(2)(v)(D), while the exception applicable to failure to comply with a workout or temporary hardship arrangement is implemented in § 226.9(g) as discussed elsewhere in this **Federal Register**. This exception also generally mirrors the statutory language, except that the Board has expressly provided that the disclosures regarding the workout or temporary hardship arrangement are required to be in writing.

New comment 9(c)(2)(v)–5, which is applicable to the exceptions in both § 226.9(c)(2)(v)(B) and (c)(2)(v)(D), provides additional clarification regarding the disclosure of variable annual percentage rates. The comment provides that if the creditor is disclosing a variable rate, the notice must also state that the rate may vary and how the rate is determined. The comment sets forth an example of how a creditor may make this disclosure. The Board believes that the fact that a rate is variable is an important piece of information of which consumers should be aware prior to commencement of a deferred interest promotion, a promotional rate, or a stepped rate program.

New comment 9(c)(2)(v)–7 provides clarification as to what terms must be disclosed in connection with a workout or temporary hardship arrangement. The comment states that in order for the exception to apply, the creditor must disclose to the consumer the rate that will apply to balances subject to the workout or temporary hardship arrangement, as well as the rate that will apply if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement. The notice also must state, if applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement. The Board believes that it is important for a consumer to be notified of his or her payment obligations pursuant to a workout or similar arrangement, and that the rate may be increased if he or she fails to make timely payments.

9(c)(2)(vi) Reduction of the Credit Limit

Consistent with the January 2009 Regulation Z Rule, the Board is adopting § 226.9(c)(2)(vi) to address notices of changes in a consumer's credit limit. Section 226.9(c)(2)(vi) requires an issuer to provide a consumer with 45 days' advance notice that a credit limit is being decreased or will be decreased prior to the imposition of any over-the-limit fee or penalty rate imposed solely as the result of the balance exceeding the newly decreased credit limit. The Board is not including a decrease in a consumer's credit limit itself as a significant change in a term that requires 45 days' advance notice, for several reasons. First, the Board recognizes that creditors have a legitimate interest in mitigating the risk of a loss when a consumer's creditworthiness deteriorates, and believes there would be safety and soundness concerns with requiring creditors to wait 45 days to reduce a credit limit. Second, the consumer's credit limit is not a term generally required to be disclosed under Regulation Z or TILA. Finally, the Board believes that § 226.9(c)(2)(vi), as adopted, adequately protects consumers against the two most costly surprises potentially associated with a reduction in the credit limit, namely, fees and rate increases, while giving a consumer adequate time to mitigate the effect of the credit line reduction.

The commentary to § 226.9(c)(2) generally is consistent with the commentary to § 226.9(c)(2) of the January 2009 Regulation Z Rule, except for changes necessary to reflect the fact that this interim final rule does not incorporate all of the requirements of § 226.9(c)(2) of the January 2009 Regulation Z Rule. In addition, as discussed above, the Board has adopted new comments 9(c)(2)(v)–5 through 9(c)(2)(v)–7.

226.9(g) Increase in Rates Due to Delinquency or Default or as a Penalty

9(g)(1) Increases Subject to This Section

The interim final rule adopts new § 226.9(g), which in combination with amendments to § 226.9(c), implements the 45-day advance notice requirements for rate increases in new TILA Section 127(i). This approach is consistent with the Board's January 2009 Regulation Z Rule, which included change-in-terms notice requirements in § 226.9(c) and increases in rates due to the consumer's default or delinquency or as a penalty for events specified in the account agreement in § 226.9(g). The general rule is set forth in § 226.9(g)(1) and provides that for credit cards under an open-end (not home-secured) consumer credit plan, a creditor must provide a written notice to each consumer who may be affected when a rate is increased due to a delinquency or default or as a penalty.

9(g)(2) Timing of Written Notice

Paragraph (g)(2) sets forth the timing requirements for the notice described in paragraph (g)(1), and states that the notice must be provided at least 45 days' prior to the effective date of the increase. The notice must, however, be provided after the occurrence of the event that gave rise to the rate increase. That is, a creditor must provide the notice after the occurrence of the event or events that trigger a specific impending rate increase and may not send a general notice reminding the consumer of the conditions that may give rise to penalty pricing.

9(g)(3) Disclosure Requirements for Rate Increases

Paragraph (g)(3) sets forth the required content for a notice provided pursuant to § 226.9(g). The notice must state that the delinquency, default, or penalty rate has been triggered, and the date on which the increased rate will apply. The notice also must state the circumstances under which the increased rate will cease to apply to the consumer's account or, if applicable, that the increased rate will remain in effect for a potentially indefinite time period. In addition, the notice must inform the consumer of his or her right to reject the application of the penalty rate prior to the effective date of the change, unless the consumer makes a payment that is more than 60 days late. The notice also must disclose instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection. If applicable, issuers are required to disclose that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended. These content requirements include a portion of the content required under § 226.9(g) of the January 2009 Regulation Z Rule and the new disclosure regarding the right to reject the changes included in the Credit Card Act (as implemented in § 226.9(h)). However, the Board is not implementing certain content requirements at this time that pertain to whether the rate applies to outstanding balances or only new transactions. The Board anticipates reviewing and revising these additional content requirements, as appropriate, for conformity with the Credit Card Act in the next stage of rulemaking.

9(g)(4) Exceptions

Paragraph (g)(4) sets forth two exceptions to the advance notice requirements of § 226.9(g), both of which are consistent with exceptions contained in the January 2009 Regulation Z Rule. First, consistent with the exception described in the supplementary information to § 226.9(c), § 226.9(g)(4)(i) contains an exception for rate increases due to a consumer's failure to comply with the terms of a workout or temporary hardship arrangement between the creditor and consumer. Second, § 226.9(g)(4)(ii) includes an exception that clarifies the relationship between the notice requirements in § 226.9(c)(vi) and (g)(1) when the creditor decreases a consumer's credit limit and under the terms of the credit agreement a penalty rate may be imposed for extensions of

credit that exceed the newly decreased credit limit. This exception is substantively identical to § 226.9(g)(4)(ii) of the January 2009 Regulation Z Rule, except that the Board is not implementing certain content requirements at this time that pertain to whether the rate applies to outstanding balances or only to new transactions. The Board anticipates reviewing and revising these additional content requirements, as appropriate, for conformity with the Credit Card Act in the next stage of rulemaking. *See* 74 FR 5355 for additional discussion of this exception.

The commentary to § 226.9(g) generally is consistent with the commentary to § 226.9(g) of the January 2009 Regulation Z Rule, except for changes necessary to reflect the fact that this interim final rule does not incorporate all of the requirements of § 226.9(g) of the January 2009 Regulation Z Rule.

9(h) Consumer Rejection of Significant Change in Terms or Increase in Annual Percentage Rate

Section 101(a)(1) of the Credit Card Act creates a new TILA Section 127(i)(3), which provides that, when consumers are notified of a rate increase or other significant change in the account terms, they must also receive notice of their right to cancel the account before the effective date of the increase or change. The Credit Card Act also creates a new TILA Section 127(i)(4), which states that a consumer's closure or cancellation of an account shall not constitute a default under the cardholder agreement and shall not trigger imposition of a penalty or fee. This provision further states that such a closure or cancellation shall not trigger an obligation to immediately repay the balance in full or through a method that is less beneficial to the consumer than a method described in revised TILA Section 171(c)(2). Revised Section 171(c)(2) lists two methods for repaying balances: First, an amortization period of not less than five years; and second, a required minimum periodic payment that includes a percentage of the balance that is not more than twice the prior percentage.

While the requirement in new Section 127(i)(3) that consumers be notified of the right to cancel is implemented in § 226.9(c)(2)(iv) and (g)(3) (as discussed above), the Board has implemented the substantive right and the protections in Section 127(i)(4) in a new § 226.9(h). Specifically, § 226.9(h)(1) provides that, if § 226.9(c)(2)(iv) or (g)(3) requires disclosure of the consumer's right to reject a significant change to an account term or other increase in an annual percentage rate, the consumer may reject that change or other increase by notifying the creditor before the effective date. Section 226.9(h)(2) further provides that, if the consumer rejects the change or other increase before the effective date, the creditor may not apply that change or other rate increase to the account, may not impose a fee or charge or treat the account as in default solely as a result of the rejection, and may not require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the listed methods. Finally, § 226.9(h)(3) provides exceptions for accounts that are more than 60 days delinquent and for transactions that occur more than 14 days after provision of the § 226.9(c) or (g) notice.

9(h)(1) Right To Reject

New TILA Section 127(i)(3) requires that a notice of an increase in rate or other significant change in terms also contain ''a brief statement of the right of the [consumer] to cancel the account pursuant to rules established by the Board before the effective date of the subject rate increase or other change.'' Credit Card Act § 101(a)(1). For the reasons discussed below, the Board interprets new TILA Section 127(i)(3) as generally establishing a substantive right for consumers who receive a notice of a rate increase or change in terms pursuant to § 226.9(c) or (g) to avoid the imposition of that increase or change by rejecting it before the effective date.

The Board understands that, as a general matter, creditors currently permit consumers to cancel their credit card accounts at any time. New TILA Section 127(i)(3), however, requires that creditors inform consumers of their *right* to cancel the account. This disclosure would be misleading if creditors were not required to honor a consumer's request to cancel. Furthermore, Section 127(i)(3) requires that the disclosure of the right to cancel be included in each notice informing a consumer of a forthcoming rate increase or change in terms. This information would be of little value to consumers at this point in time if exercising the right to cancel had no effect on the increase or change. Finally, Section 127(i)(3) specifically requires that consumers be informed that they have a right to cancel *before* the effective date of the rate increase or change in terms, which implies that—as is the case under certain state laws—canceling the account within this time period will preclude the creditor from applying the increased rate or changed term.[14]

For these reasons, the Board believes that it is consistent with the purposes of the Credit Card Act and TILA to interpret the right to cancel in Section 127(i)(3) as a substantive right for a consumer to reject a rate increase or change in terms. Although the Credit Card Act contains other provisions that protect consumers from the application of increased rates, fees, and finance charges to outstanding balances, these provisions are not effective until February 22, 2010. *See* Credit Card Act §§ 3, 101(b). Furthermore, even when these provisions become effective, they may not cover every type of change in terms that could be costly to consumers. Accordingly, pursuant to Section 127(i)(3)'s specific grant of authority to establish rules implementing the right to cancel and the Board's general authority under TILA Section 105(a) (15 U.S.C. 1604(a)) to prescribe regulations to carry out the purposes of TILA, the Board is adopting § 226.9(h)(1), which provides that, if § 226.9(c)(2)(iv) or (g)(3) requires disclosure of the consumer's right to reject a significant change to an account term or other increase in an annual percentage rate, the consumer may generally reject that change or increase by notifying the creditor of the rejection before the effective date of the change or increase.[15] As discussed below, however, this right is subject to limited exceptions, such as when the account is more than 60 days delinquent.

Comment 9(h)(1)–1 provides clarification regarding the procedures creditors may use for the submission of rejections. It states that a creditor may place requirements on the submission of rejections of a change in term or a rate increase but that such requirements must be reasonable. As an example, the comment states it would be reasonable

[14] *See, e.g.,* Ala. Code § 5–20–5; 5 Del. Code § 952; Off. Code of Ga. § 7–5–4; S.D. Codified Laws § 54–11–10. Notably, these state law rights to reject generally do not apply when a rate is increased due to default or delinquency or as a penalty. However, as with the 45-day advance notice requirement, the right to cancel in new TILA Section 127(i) does not distinguish between penalty rate increases and other rate increases. Similarly, although some of these state laws apply only to rate increases and not other changes to account terms, Section 127(i) clearly contemplates that the right to cancel will apply to significant changes in terms.

[15] Section 226.9(h) distinguishes between an increase in an annual percentage rate pursuant to a change to an account term (for which a § 226.9(c) notice is required) and ''*other* increase[s] in an annual percentage rate'' (for which a § 226.9(g) notice is required). When a creditor increases a rate due to delinquency or default or as a penalty, it generally does so by invoking a penalty provision in the account agreement rather than by changing the terms of the agreement. Thus, this type of rate increase is not technically a change in terms.

for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number. Similarly, it states that a creditor may designate channels for submitting rejections other than the toll-free telephone number required to be disclosed pursuant to § 226.9(c) or (g) (such as a mailing address), so long as the creditor does not require that rejections be submitted through such additional channels. Although some provisions of Regulation Z require consumers to submit requests in writing,[16] the Board believes that imposing such a requirement in these circumstances would inhibit consumers' exercise of their right to reject impending rate increases and changes and is unnecessary because many issuers currently accept requests to close or cancel credit card accounts by telephone.

Comment 9(h)(1)–1 states that it would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to § 226.9(c) or (g) and to treat the account as not subject to § 226.9(h) if a rejection is received on or after that date. The comment states that it would not, however, be reasonable to require that rejections be received earlier than the day before the effective date. Instead, a creditor that is unable to process all rejections received before the effective date through the toll-free number and any other designated channel may delay implementation of the rate increase or change in terms until all rejections have been processed. In the alternative, the creditor could implement the increase or change on the effective date and then, on any account for which a timely rejection was received, return the account to the prior terms and ensure that the account is not assessed any additional interest or charges as a result of the increased rate or changed term or that the account is credited for such interest or charges. An example is provided in the commentary.

The Board is also adopting comment 9(h)(1)–2, which clarifies that a consumer does not waive or forfeit the right to reject a change in terms or a rate increase by using the account for transactions prior to the effective date of the change or increase. Similarly, the comment clarifies that a consumer does not revoke a rejection by using the account for transactions. Although under some state laws use of the account following notice of an increase or change constitutes acceptance of that increase or change, the Board has previously rejected this approach with respect to the advance notice requirements in § 226.9(c). *See* comment 9(c)(1)–3.ii (redesignated as comment 9(c)(2)(i)–3.ii). A consumer may use the account for transactions after the notice has been sent but before it has been received and therefore be unaware of the change or increase. Similarly, a consumer may inadvertently use the account after receiving the § 226.9(c) or (g) notice or exercising the right to reject without intending to accept the change or increase (such as by inadvertently failing to cancel an automated recurring charge). As discussed below, however, if the account is used for a transaction more than 14 days after provision of the § 226.9(c) or (g) notice, § 226.9(h)(3)(ii) permits the creditor to apply the changed term or increased rate to that transaction even if the consumer rejects the change or increase before the effective date.

9(h)(2) Effect of Rejection

9(h)(2)(i) Prohibition on Applying Changed Term or Increased Rate

As discussed above, based on its analysis of new TILA Section 127(i), the Board concludes that the right to cancel set forth in Section 127(i)(3) entitles a consumer to avoid application of a rate increase or change in terms by rejecting that increase or change prior to its effective date. Accordingly, § 226.9(h)(2)(i) provides that, if a creditor is notified of such a rejection, the creditor must not apply the increased rate or changed term to the account.

The Board is adopting comment 9(h)(2)(i)–1, which clarifies the application of § 226.9(h)(2)(i) to accounts subject to a promotional rate or a deferred interest or similar program. Specifically, this comment clarifies that, although § 226.9(h)(2)(i) provides that the creditor must not apply the change or increase to the account if the consumer has rejected that change or increase, it does not prohibit a creditor from applying the terms of a pre-existing promotional rate or deferred interest or similar program. The comment also provides examples illustrating the application of § 226.9(h)(2)(i) in these circumstances.[17]

9(h)(2)(ii) Prohibition on Penalties

New TILA Section 127(i)(4) provides, among other things, that closure or cancellation of an account by a consumer ''shall not constitute a default under an existing cardholder agreement'' and ''shall not trigger * * * the imposition of any other penalty or fee.'' Credit Card Act § 101(a)(1). Accordingly, the Board is adopting § 226.9(h)(2)(ii), which provides that, if a consumer rejects a significant change in terms or an increased rate, the creditor must not impose a fee or charge or treat the account as in default solely as a result of the rejection. The Board and the other Agencies adopted a similar prohibition in the January 2009 FTC Act Rule. *See* 12 CFR 227.24(c)(2), 74 FR 5560.

The Board is also adopting comment 9(h)(2)(ii)–1, which provides as an example of the type of fee or charge prohibited by § 226.9(h)(2)(ii) a monthly maintenance fee that would be charged only if the consumer rejected the change or increase. The comment clarifies, however, that a creditor is not prohibited from continuing to charge a fee that was charged before the rejection. For example, a creditor that charged a periodic fee or a fee for late payment before a change or increase was rejected is not prohibited from charging those fees after rejection of the change or increase. This comment is based on a similar comment adopted by the Board and the other Agencies in the January 2009 FTC Act Rule as well as clarifications proposed by the Agencies in May 2009. *See* comment 24(c)(2)–1, 74 FR 5566; *see also* 74 FR 20820.

The Board is also adopting comment 9(h)(2)(ii)–2, which clarifies that § 226.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability if the consumer rejects a rate increase or change in terms. Although the termination or suspension of credit availability could be construed as a penalty, the Board believes that permitting the creditor to terminate or suspend credit availability is consistent with the references in new TILA Section 127(i)(3) and (4) to the closure or cancellation of the account. This comment clarifies, however, that § 226.9(h) does not *require* a creditor to terminate or suspend credit availability for consumers who reject a rate increase or change in terms. Indeed, there may be circumstances where an issuer elects to continue extending credit to a consumer notwithstanding the rejection. As discussed below, in these circumstances, § 226.9(h)(3)(ii) permits the creditor to apply the increased rate or changed term to transactions that

[16] *See, e.g.,* 12 CFR 226.13(b) (requiring that billing error notices be submitted in writing).

[17] The Board notes that these and other examples in the commentary to § 226.9(h) reflect the amendments to TILA that go into effect on August 20, 2009. To the extent that these examples or any other aspect of the interim final rule and commentary are inconsistent with provisions of the Credit Card Act that take effect after August 20 (particularly the limitations in revised TILA Section 171 on the application of increased rates to existing balances), the Board will revise them in a subsequent rulemaking.

occur more than 14 days after provision of the § 226.9(c) or (g) notice.

9(h)(2)(iii) Repayment of Outstanding Balance

New TILA Section 127(i)(4) also provides that closure or cancellation of an account by a consumer ''shall not trigger an obligation to repay the obligation in full or through a method that is less beneficial to the [consumer] than one of the methods described in section 171(c)(2). * * *'' Credit Card Act § 101(a)(1). Amended TILA Section 171(c)(2) lists two methods of repaying an outstanding balance: First, an amortization period of not less than five years (beginning on the effective date of the increase set forth in the Section 127(i) notice); and, second, a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the Section 127(i) notice. *See id.*

Notably, however, these methods are prefaced by amended TILA Section 171(c)(1), which states ''[t]he creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the [consumer] with one of the methods described in [Section 171(c)(2)] * * * or a method that is no less beneficial to the [consumer] than one of those methods.'' *Id.* In certain circumstances, however, the repayment method used by the creditor prior to rejection may result in a higher payment than under one of the methods listed in amended TILA Section 171(c)(2). For example, assume that the required minimum periodic payment on a credit card account is the greater of: (1) Fees and accrued interest plus two percent of the outstanding balance; or (2) a ''floor'' amount of $50. Assume also that, when the consumer rejects a rate increase or change in terms, the account has an outstanding balance of $1,000 and the creditor doubles the percentage of the balance included in the minimum payment to four percent. As the outstanding balance decreases with each payment, the minimum payment will eventually reach the $50 floor, which will be greater than four percent of the outstanding balance plus fees and accrued interest.

Although new TILA Section 127(i)(4) could be read to prohibit a creditor from using the pre-existing ''floor'' minimum payment in these circumstances, the Board believes that it is consistent with the purposes of TILA (as expressed in amended TILA Section 171(c)(1)) to apply the existing ''floor'' minimum payment. If the purpose of Section 127(i)(4) is to prevent the creditor from penalizing a consumer for closing or cancelling an account by requiring repayment of the outstanding balance on terms that are more onerous to the consumer, retention of an existing repayment method is consistent with that purpose. In addition, prohibiting application of the ''floor'' minimum payment would delay repayment of the balance in full and result in additional interest charges without providing any substantial benefit to the consumer.

Accordingly, the Board is using its general authority under TILA Section 105(a) to adopt § 226.9(h)(2)(iii), which provides that, if a consumer rejects a rate increase or change in terms, the creditor must not require repayment of the balance on the account using a method that is less beneficial to the consumer than one of three listed methods: First, the method of repayment for the account on the date on which the creditor was notified of the rejection; second, an amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or, third, a required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection.[18] The Board and the other Agencies adopted a similar provision in the January 2009 FTC Act Rule. *See* 12 CFR 227.24(c)(1), 74 FR 5560; *see also* comment 24(c)–2, 74 FR 5565.

The Board is also adopting comment 9(h)(2)(iii)–1, which clarifies that a repayment method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account prior to the date on which the creditor received the rejection. The comment further clarifies that a method is no less beneficial to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 226.9(h)(2)(iii)(C).

In addition, the Board is adopting comment 9(h)(2)(iii)(B)–1, which clarifies that, although § 226.9(h)(2)(iii)(B) provides for an amortization period of no less than five years beginning no earlier than the date on which the creditor was notified of the rejection, a creditor is not required to recalculate the required minimum periodic payment if, during the amortization period, the balance is reduced as a result of payments by the consumer in excess of that minimum payment.

Furthermore, the Board is adopting comment 9(h)(2)(iii)(B)–2, which clarifies that, if the annual percentage rate that applies to the balance subject to § 226.9(h)(2)(iii) varies with an index, the creditor may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the balance is amortized in five years. Finally, the Board is adopting comment 9(h)(2)(iii)(C)–1, which provides an example of how a creditor could adjust the required minimum periodic payment on a balance by no more than doubling the percentage of the balance included in that payment. The commentary to § 226.9(h)(2)(iii) is similar to commentary adopted by the Board and the other Agencies in the January 2009 FTC Act Rule. *See* comment 24(c)(1)–1, 74 FR 5565; comment 24(c)(1)(i)–1, 74 FR 5574; comment 24(c)(1)(i)–2, 74 FR 5574; comment 24(c)(1)(ii)–2, 74 FR 5574.

9(h)(3) Exceptions

Pursuant to new TILA Section 127(i)(3)'s express grant of authority to establish rules implementing the right to cancel and the Board's general authority under TILA Section 105(a) (15 U.S.C. 1604(a)) to make adjustments and exceptions to carry out the purposes of TILA and to facilitate compliance therewith, the Board is establishing two exceptions to § 226.9(h), which are discussed below.

In addition, the Board is adopting comment 9(h)(3)–1, which clarifies that, in addition to the circumstances listed in § 226.9(h)(3), § 226.9(h) does not apply to home equity plans subject to the requirements of § 226.5b that are accessible by a credit or charge card because § 226.9(c)(2) and 226.9(g) do not apply to such plans. Similarly, the comment clarifies that § 226.9(h) does not apply when the required minimum periodic payment is increased because § 226.9(c)(2)(iv) does not require disclosure of the right to reject in those circumstances.

9(h)(3)(i) Delinquencies of More Than 60 Days

Section 226.9(h)(3)(i) provides that § 226.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for

[18] The repayment methods in § 226.9(h)(2)(iii) focus on the date on which the creditor is notified of the rejection rather than the effective date for the increased rate or change in terms because, once the consumer exercises the right to reject, the effective date will generally become irrelevant.

that payment. This exception is based on a similar exception to the Credit Card Act's general prohibition on applying increased annual percentage rates, fees, or finance charges to outstanding balances. *See* Credit Card Act § 101(b) (revised TILA Section 171(b)(4)). Although that prohibition is not effective until February 22, 2010,[19] the Board believes that a parallel exception for delinquencies of more than 60 days is appropriate here. Otherwise, after February 22, 2010, a consumer who is more than 60 days delinquent could use the right to reject a rate increase to override the exception specifically created by the Credit Card Act for such circumstances. The Board does not believe that this was Congress's intent because the Credit Card Act's exception for delinquencies of more than 60 days contains its own remedy for consumers. Specifically, the exception provides that, if an increased rate, fee, or finance charge is applied to an outstanding balance based on a delinquency of more than 60 days, the creditor must ''terminate such increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period.'' Credit Card Act § 101(b) (revised TILA Section 171(b)(4)(B)). Thus, based on its review of the Credit Card Act as a whole, the Board believes it would be inconsistent to extend the right to reject to circumstances where a consumer is more than 60 days delinquent.[20]

9(h)(3)(ii) Transactions That Occur More Than 14 Days After Provision of Notice

Section 226.9(h)(3)(ii) provides that § 226.9(h) does not apply to transactions that occur more than 14 days after provision of the notice required by § 226.9(c) or (g). Like the exception for delinquencies of more than 60 days, this exception is based on the provisions of the Credit Card Act that generally prohibit creditors from applying increased rates, fees, and finance charges to outstanding balances. Specifically, those provisions address circumstances in which a consumer uses an account for transactions after receiving advance notice of an increase by defining the ''outstanding balance'' to which the increase may not be applied as ''the amount owed * * * as of the end of the 14th day after the date on which the creditor provides [the] notice. * * *'' Credit Card Act § 101(b) (revised TILA Section 171(d)). By establishing separate timing rules for the notice requirement and the substantive limitations, the Credit Card Act balances the interests of consumers and creditors. On the one hand, the 14-day period ensures that the increased rate, fee, or finance charge will not apply to transactions that occur before the consumer has received the notice and had a reasonable amount of time to review it and to decide whether to use the account for additional transactions. On the other hand, by allowing creditors to apply the increase to transactions that occur more than 14 days after provision of the notice, the Credit Card Act reduces the potential that a consumer—having been notified of an increase in the rate for new transactions—will use the 45-day notice period to engage in transactions to which the increased rate cannot be applied.

In the FTC Act rulemaking, the Board and the other Agencies addressed this issue by proposing a similar 14-day period. *See* proposed 12 CFR 227.24(a)(2), 73 FR 28920, 28942. Like the Agencies' 21-day safe harbor for mailing periodic statements, 14 days was intended to allow seven days for the notice to reach the consumer and seven days for the consumer to review that notice and take appropriate action (*e.g.,* begin using a different credit account). The Agencies noted that, although institutions could address the concern that the 45-day notice period could be abused by denying additional extensions of credit after sending the notice, that outcome might not be beneficial to consumers who have received the notice and wish to use the account for new transactions. Based on the comments and further analysis, the Board and the other Agencies concluded that consumers did not require seven days to review the notice and take appropriate action and reduced the 14-day period to seven days in the January 2009 FTC Act Rule. *See* 12 CFR 227.24(b)(3), 74 FR 5560. Ultimately, however, Congress elected to address this issue using the 14-day period originally proposed by the Agencies.

Because the right to reject a rate increase or change in terms can raise concerns similar to those addressed by new TILA Section 171(d), the Board believes it is appropriate to apply the 14-day period here as well. As discussed above with respect to comment 9(h)(1)–2, a consumer's use of the account after receiving the § 226.9(c) or (g) notice should not result in a waiver or forfeiture of the right to reject (even if the consumer has already exercised that right). However, the Board believes it would be inconsistent with the purpose of the Credit Card Act (as stated in revised TILA Section 171(d)) to permit a consumer to deliberately engage in transactions after receiving the notice and then exercise the right to reject shortly before the effective date in order to prevent the creditor from applying the increased rate or changed term to those transactions.[21] Accordingly, based on its review of the Credit Card Act as a whole, the Board is using its authority under TILA Section 105(a) and new TILA Section 127(i)(3) to permit creditors to apply the increased rate or changed term to transactions that occur more than 14 days after provision of the § 226.9(c) or (g) notice even in circumstances where the consumer has exercised the right to reject.

The Board is adopting comment 9(h)(3)(ii)–1, which clarifies that, although § 226.9(h)(3)(ii) permits a creditor to apply a changed term or increased rate to transactions that occur more than 14 days after provision of the notice required by § 226.9(c) or (g), it does not permit a creditor to reach back to days before the effective date of the change in terms or rate increase when calculating interest charges. The comment also clarifies that, because the exception in § 226.9(h)(3)(ii) is limited to changed terms and increased rates that can be applied to *transactions,* it does not permit a creditor to apply a changed term to the entire account simply because the account was used for a transaction more than 14 days after provision of a § 226.9(c) or (g) notice. For example, if a consumer rejects an increase in a periodic fee or late payment fee, the creditor is prohibited from applying the increased fee to the account even if the account is used for a transaction more than 14 days after provision of the § 226.9(c) notice. In contrast, § 226.9(h)(3)(ii) does permit a creditor to apply an increased rate or a transaction fee to a transaction that occurred more than 14 days after provision of the § 226.9(c) or (g) notice so long as that increased rate or transaction fee is not applied to other transactions.

The Board is also adopting comment 9(h)(3)(ii)–2, which clarifies that whether a transaction occurred prior to provision of a notice or within 14 days after provision of a notice is generally determined by the date of the transaction. The Board notes that

[19] *See* Credit Card Act § 3.

[20] Comment 9(h)(3)(i)–1 provides illustrative examples of the application of this exception.

[21] Furthermore, although a creditor may terminate credit availability and decline to honor additional transactions after the consumer rejects an increase or change, there may be circumstances where a creditor is obligated to honor a particular transaction (such as when the transaction was authorized by the creditor before credit availability was terminated).

revised TILA Section 171(d) refers to ''the amount owed'' at the end of the fourteenth day after provision of the § 226.9(c) or (g) notice rather than to transactions that occur during that 14-day period. The Board is also aware that, for a variety of reasons (including a merchant's delay in submitting a transaction to the creditor), a transaction may occur within the 14-day period but not be added to the consumer's outstanding balance until after that period. Although such delays may present challenges for creditors when determining whether a transaction occurred within the 14-day period, these delays are generally unknown to consumers and outside of their control. A consumer who engages in a transaction on a particular date could reasonably expect the transaction to be added to their outstanding balance on that date. Accordingly, the Board believes that, as a general matter, it is consistent with the purposes of TILA to focus on the transaction date.

However, to facilitate compliance with § 226.9(h)(3)(ii), comment 9(h)(3)(ii)–2 states that, if a transaction that occurred within 14 days after provision of the notice is not charged to the account prior to the effective date of the change or increase, the creditor may treat the transaction as occurring more than 14 days after provision of the notice for purposes of § 226.9(h)(3)(ii). In addition, the comment states that, when a merchant places a ''hold'' on the available credit on an account for an estimated transaction amount when the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.9(h)(3)(ii) is the date on which the actual transaction amount is charged to the account.

This comment is based on a similar comment adopted by the Board and the other Agencies in the January 2009 FTC Act Rule as well as clarifications proposed by the agencies in May 2009 and the comments received in response. *See* comment 24(b)(3)–2, 74 FR 5564; *see also* 74 FR 20810, 20818. Examples illustrating the application of § 226.9(h)(3)(ii) and the guidance in comments 9(h)(3)(ii)–1 and –2 are provided in comment 9(h)(3)(ii)–3.

Implementation of Interim Final Rule for Subsequent Disclosure Requirements

Revised § 226.9(c) and new § 226.9(g) and (h) are effective, consistent with the Credit Card Act and the rest of this interim final rule, on August 20, 2009.

Notices required under § 226.9(c). The relevant date for determining whether a change-in-terms notice must comply with the new advance notice requirements of revised § 226.9(c)(2) is generally the date on which the notice is provided, not the effective date of the change. The Board believes that this is the appropriate transition rule in order to provide clarity and certainty to issuers. Therefore, if a notice of a change in terms is provided pursuant to existing § 226.9(c) prior to August 20, 2009, the notice only need be given 15 days in advance of the effective date of the change, even if the change itself becomes effective after August 20. For example, a creditor may provide a notice in accordance with existing Regulation Z on August 10, 2009 disclosing a change-in-terms effective August 26, 2009. Accordingly, any such notice would not be required to comply with the content requirements of this interim final rule, including the disclosure of the consumer's right to reject the change.

Any notice provided on or after August 20, 2009 would be subject to all of the content and other requirements of § 226.9(c)(2), as applicable. For example, assume a creditor mails a change-in-terms notice to a consumer on August 20, 2009 disclosing a rate increase effective on October 4, 2009, to which none of the exceptions in § 226.9(c)(2)(v) apply. That notice would be required to disclose all of the content set forth in § 226.9(c)(2)(iv), including required disclosures pertaining to the consumer's right to reject the change.

The Board believes that this is the appropriate way to implement the August 20, 2009 effective date in order to ensure that institutions are provided the full 90-day implementation period provided under the Credit Card Act. In the alternative, the Credit Card Act could be construed to require creditors to provide notices, pursuant to new § 226.9(c)(2), 45 days in advance of changes occurring on or after August 20. However, this reading would create uncertainty regarding compliance with the rule by requiring creditors to begin providing change-in-terms notices in accordance with revised TILA Section 127(i) in some cases as much as 45 days prior to the August 20, 2009 effective date, and prior to the publication of this interim final rule. Accordingly, for clarity and consistency, the Board believes the better interpretation is that creditors must begin to comply with amended TILA Section 127(i) (as implemented in amended § 226.9(c)(2)) for change-in-terms notices provided on or after August 20, 2009.

Notices required under § 226.9(g). For rate increases due to the consumer's default or delinquency or as a penalty, the 15-day timing requirement of § 226.9(c) currently does not apply. Current § 226.9(c)(1) states only that notice of the increase must be given before the effective date of the change. Therefore, the relevant date for purposes of penalty rate increases generally is the date on which the increase becomes effective. For example, if a consumer makes a late payment on August 10, 2009 that triggers penalty pricing, a creditor may increase the rate effective on or before August 19, 2009 in compliance with existing Regulation Z, and need not provide 45 days' advance notice of the change.

The Board is aware that there may be some circumstances in which a consumer's behavior prior to August 20, 2009 triggers a penalty rate, but a creditor may be unable to implement that rate increase prior to August 20, 2009. For example, a consumer may make a late payment on August 15, 2009 that triggers a penalty rate, but the creditor may not be able to implement that rate increase until August 25, 2009 for operational reasons. In these circumstances, the Board believes that requiring 45 days' advance notice prior to the imposition of the penalty rate would not be appropriate, because it would in effect require compliance with new § 226.9(g) prior to the August 20 effective date. Therefore, for such penalty rate increases that are triggered, but cannot be implemented, prior to August 20, 2009, a creditor must either provide the consumer, prior to August 20, 2009, with a written notice disclosing the impending rate increase and its effective date, or must comply with new § 226.9(g). In the example described above, therefore, a creditor could mail to the consumer a notice on August 19, 2009 disclosing that the consumer has triggered a penalty rate increase that will be effective on August 25, 2009. If the creditor mailed such a notice, it would not be required to comply with new § 226.9(g). This transition guidance applies only to penalty rate increases triggered prior to August 20, 2009; if a consumer engages in behavior that triggers penalty pricing on August 20, 2009, the creditor must comply with new § 226.9(g) and, accordingly, must provide the consumer with a notice at least 45 days in advance of the effective date of the increase.

Promotional rates.[22] Some creditors may have outstanding promotional rate programs that were in place before the effective date of this interim final rule, but under which the promotional rate

[22] For simplicity, the Board refers in this subsection to ''promotional rates.'' However, pursuant to new comment 9(c)(2)(v)–6, this transition guidance is intended to apply equally to deferred interest or similar programs.

will not expire until after August 20, 2009. For example, a creditor may have offered its consumers a 5% promotional rate on purchases beginning on September 1, 2008 that will be increased to 15% effective as of September 1, 2009. Such creditors may have concerns about whether the disclosures that they have provided to consumers in accordance with these arrangements are sufficient to qualify for the exception in § 226.9(c)(2)(v)(B). The Board notes that § 226.9(c)(2)(v)(B) of this interim final rule requires only clear and conspicuous written disclosures of the term of the promotional rate and the rate that will apply when the promotional rate expires. The Board anticipates that many creditors offering such a promotional rate program already will have complied with these advance notice requirements in connection with offering the promotional program.

The Board is nonetheless aware that some other creditors may be uncertain whether written disclosures provided at the time an existing promotional rate program was offered are sufficient to comply with the exception in § 226.9(c)(2)(v)(B). For example, for promotional rate offers provided after August 20, 2009, the disclosure under § 226.9(c)(2)(v)(B)(*1*) must include the rate that will apply after the expiration of the promotional period. For an existing promotional rate program, a creditor might instead have disclosed this rate narratively, for example by stating that the rate that will apply after expiration of the promotional rate is the standard annual percentage rate applicable to purchases. The Board does not believe that it is appropriate to require a creditor that generally provided disclosures consistent with § 226.9(c)(2)(v)(B), but that are technically not compliant because they described the post-promotional rate narratively, to provide consumers with 45 days' advance notice and the right to reject the change, before expiration of the promotional period. This would have the impact of imposing the requirements of this interim final rule retroactively, to disclosures given prior to the August 20, 2009 effective date. Therefore, a creditor that generally made disclosures prior to August 20, 2009 complying with § 226.9(c)(2)(v)(B) but that describe the type of post-promotional rate rather than disclosing the actual rate is not required to provide an additional notice pursuant to § 226.9(c)(2) before expiration of the promotional rate in order to use the exception.

Similarly, the Board acknowledges that there may be some creditors with outstanding promotional rate programs that did not make, or, without conducting extensive research, are not aware if they made, written disclosures of the length of the promotional period and the post-promotional rate. For example, some creditors may have made these disclosures orally. For the same reasons described in the foregoing paragraph, the Board believes that it would be inappropriate to preclude use of the § 226.9(c)(2)(v)(B) exception by creditors offering these promotional rate programs. That interpretation of the rule would in effect require creditors to have complied with the precise requirements of the exception before the August 20, 2009 effective date. However, the Board believes at the same time that it would be inconsistent with the intent of the Credit Card Act for creditors that provided no advance notice of the term of the promotion and the post-promotional rate to receive an exemption from the general notice requirements of § 229.9(c)(2).

Consequently, any creditor that provides a written disclosure to consumers subject to an existing promotional rate program, prior to August 20, 2009, stating the length of the promotional period and the rate or type of rate that will apply after that promotional rate expires is not required to provide an additional notice pursuant to § 226.9(c)(2) prior to applying the post-promotional rate. In addition, any creditor that can demonstrate that it provided, prior to August 20, 2009, oral disclosures of the length of the promotional period and the rate or type of rate that will apply after the promotional period also need not provide an additional notice under § 226.9(c)(2). However, any creditor subject to § 226.9(c)(2) that has not provided advance notice of the term of a promotion and the rate that will apply upon expiration of that promotion in the manner described above prior to August 20, 2009 will be required to provide 45 days' advance notice containing the content set forth in this interim final rule before raising the rate.

Right to reject. New § 226.9(h) is predicated on the provision of a notice containing a disclosure of the consumer's right to reject, which is required by new § 226.9(c) and (g) but is not required by current § 226.9. Thus, new § 226.9(h) applies to the same extent as revised § 226.9(c) and new § 226.9(g). For example, because a creditor providing a change-in-terms notice on August 15, 2009 is required to comply with the requirements of current § 226.9(c) rather than revised § 226.9(c), the creditor is not required to provide the consumer with the right to reject that change pursuant to new § 226.9(h). If, however, that notice were provided on August 20 and new § 226.9(c)(2)(iv) required disclosure of the right to reject, the requirements in new § 226.9(h) would apply.

Similarly, because current § 226.9 permits a creditor to increase a rate due to the consumer's delinquency or default or as a penalty without providing 15 days' advance notice, a creditor that increases a rate for these reasons effective on or before August 19, 2009 or provides notice of such an increase on or before August 19, 2009 is not required to provide the consumer with the right to reject that increase pursuant to new § 226.9(h). If, however, new § 226.9(g)(3) applies to the increase, the requirements in new § 226.9(h) also would apply.

Finally, the exception in § 226.9(h)(3)(i) for accounts that are more than 60 days delinquent applies even if the delinquency began prior to the August 20, 2009 effective date. For example, if the required minimum periodic payment due on July 15, 2009 has not been received by September 14, 2009, the exception in § 226.9(h)(3)(i) applies.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an initial and final regulatory flexibility analysis only when 15 U.S.C. 553 requires publication of a notice of proposed rulemaking. *See* 5 U.S.C. 603(a), 604(a). As discussed in II. Statutory Authority, however, the Board has found good cause under 5 U.S.C. 553(b)(B) to conclude that, with respect to this interim final rule, publication of a notice of proposed rulemaking is impracticable and unnecessary. Accordingly, the Board is not required to perform an initial or final regulatory flexibility analysis. Nonetheless, in order to solicit additional information from small entities subject to the interim final rule, the Board is publishing an initial regulatory flexibility analysis relying, in large part, on the regulatory flexibility analyses conducted for the Board's January 2009 Regulation Z Rule and the January 2009 FTC Act Rule.

As discussed in III. Section-by-Section Analysis, the interim final rule is similar in most respects to rules adopted by the Board and the other Agencies in the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule. Prior to adopting those rules, the Board conducted initial and final regulatory flexibility analyses and ultimately concluded that the rules would have a significant economic impact on a substantial number of small entities. *See* 72 FR 32948, 33033–33034

(June 14, 2007); 73 FR 28866, 28887–28888 (May 19, 2008); 73 FR 28904, 28933–28934 (May 19, 2008); 74 FR 5390–5393; 74 FR 5548–5550. Because the interim final rule does not alter the substance of the analyses and determinations accompanying the January 2009 rules, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.[23]

In particular, the Board notes that, although the January 2009 rules did not include a right to reject increases in annual percentage rates and other significant changes to the terms of the account agreement, the requirements in new § 226.9(h) do not create significant new burdens that would alter the Board's prior regulatory flexibility analyses and determinations. To the extent that new § 226.9(h) prohibits creditors from applying an increased rate to a credit card account if the consumer rejects the increase, it is no more restrictive than 12 CFR 227.24 in the January 2009 FTC Act Rule, which generally prohibited such increases regardless of the consumer's acceptance or rejection. *See* 74 FR 5560. Furthermore, insofar as new § 226.9(h) prohibits creditors from applying rate increases and other significant changes in terms if the consumer exercises the right to reject, many creditors are already subject to similar requirements under existing state laws.[24]

Reasons, statement of objectives and legal basis for the interim final rule. The interim final rule implements a number of new substantive and disclosure provisions required by the Credit Card Act, which establishes fair and transparent practices relating to the extension of open-end consumer credit plans. The supplementary information above describes in detail the reasons, objectives, and legal basis for each component of the proposed rules.

Description of small entities affected by the interim final rule. All creditors that offer open-end credit plans are subject to the interim final rule. The Board is relying on its analysis in the January 2009 Regulation Z Rule, in which the Board provided data on the number of entities that may be affected because they offer open-end credit plans. The Board acknowledges, however, that the total number of small entities likely to be affected by the interim final rule is unknown, because the open-end credit provisions of the Credit Card Act and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. (For a detailed description of the Board's analysis of small entities subject to the January 2009 Regulation Z Rule, *see* 74 FR 5391.) The Board invites comment on the effect of the interim final rule on small entities.

Projected reporting, recordkeeping and compliance requirements of the interim final rule. The compliance requirements of this interim final rule are described above in III. Section-by-Section Analysis. The Board notes that the precise costs to small entities to conform their open-end credit disclosures to the interim final rule and the costs of updating their systems to comply with the rule are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the interim final rule to small entities.

Other federal rules. As discussed in I. Background and Implementation of the Credit Card Act, although the Board previously issued similar rules in its January 2009 Regulation Z Rule and its January 2009 FTC Act Rule, the Board is not currently withdrawing any provisions of the January 2009 rules. Instead, the Board anticipates that in connection with finalizing rules for the provisions of the Credit Card Act that are effective February 22, 2010, it will amend or withdraw those portions of the January 2009 rules that are inconsistent with the requirements of the Credit Card Act.

Significant alternatives to the interim final rule. As noted above, the core provisions of this interim final rule implement the statutory requirements of the Credit Card Act that are effective on August 20, 2009. The Board has implemented these requirements so as to minimize burden, while retaining benefits to consumers. In doing so, the Board was informed by consumer testing conducted and comments received in connection with the January 2009 rules. The Board welcomes comment on any significant alternatives, consistent with the Credit Card Act, that would minimize the impact of the interim final rule on small entities.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1) (PRA), the Board has reviewed the interim final rule under the authority delegated to the Board by the Office of Management and Budget. The collections of information that are required by the interim final rule are found in § 226.9(c) and (g). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 734,127 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA.

As discussed in III. Section-by-Section Analysis, however, the amended § 226.9(c) and new § 226.9(g) in the interim final rule are substantially similar to the amended § 226.9(c) and new § 226.9(g) in the Board's January 2009 Regulation Z Rule. Although § 226.9(g) in the interim final rule includes a requirement that creditors disclose the consumer's right to reject an increased rate or changed term, the effect should be negligible since many creditors are already required to provide a similar disclosure under existing state laws.[25] Moreover, those creditors not currently subject to such state laws must simply include a brief statement of the consumer's right to reject in the existing

[23] The Board recognizes, however, that while the January 2009 FTC Act Rule applies only to consumer credit card accounts, the requirement in the Credit Card Act and the interim final rule that periodic statements be mailed or delivered at least 21 days before the payment due date and grace period expiration date applies to all open-end consumer credit plans (including home equity lines of credit accessed by a credit card). Although the Board does not have sufficient information to quantify the effect of this specific aspect of the rule on small entities, this additional requirement supports the Board's overall conclusion that the interim final rule will have a significant economic impact on a substantial number of small entities.

[24] *See, e.g.,* Ala. Code § 5–20–5; 5 Del. Code § 952; Off. Code of Ga. § 7–5–4; Nev. Rev. Stat. § 97A.140; S.D. Codified Laws § 54–11–10; Utah Code § 70C–4–102.

[25] *See, e.g.,* Ala. Code § 5–20–5; 5 Del. Code § 952; Off. Code of Ga. § 7–5–4; Nev. Rev. Stat. § 97A.140; S.D. Codified Laws § 54–11–10; Utah Code § 70C–4–102.

notice for an increased rate or changed term. The rule does not require that a separate, detached disclosure of the right to reject be provided to the consumer. Accordingly, because the interim final rule does not alter the substance of the Board's PRA analysis with respect to the January 2009 final rule (Docket No. R–1286), the Board continues to rely on that analysis, as reported in accordance with those estimates in documents filed with OMB, for purposes of this rulemaking. *See* 74 FR 5392–5393.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

Text of Interim Final Revisions

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 is amended to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

■ 2. Section 226.5 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 226.5 General disclosure requirements.

* * * * *

(b) * * *

(2) * * *

(ii) Creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires.[10] A creditor that fails to meet this requirement shall not treat a payment as late for any purpose or collect any finance or other charge imposed as a result of such failure. For purposes of this paragraph, ''grace period'' means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

■ 3. Section 226.9 is amended as follows:

■ A. Paragraph (c) is revised.

■ B. New paragraphs (g) and (h) are added.

§ 226.9 Subsequent disclosure requirements.

* * * * *

(c) *Change in terms*—(1) *Rules affecting home-equity plans and open-end plans that are not credit card accounts.* (i) *Written notice required.* For home-equity plans subject to the requirements of § 226.5b and other open-end plans that are not credit card accounts, whenever any term required to be disclosed under § 226.6 is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer, or if a periodic rate or other finance charge is increased because of the consumer's delinquency or default; the notice shall be given, however, before the effective date of the change.

(ii) *Notice not required.* For home-equity plans subject to the requirements of § 226.5b and other open-end plans that are not credit card accounts, no notice under this section is required when the change involves late payment charges, charges for documentary evidence, or over-the-limit charges; a reduction of any component of a finance or other charge; suspension of future credit privileges or termination of an account or plan; or when the change results from an agreement involving a court proceeding, or from the consumer's default or delinquency (other than an increase in the periodic rate or other finance charge).

(iii) *Notice for home equity plans.* If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home equity plan pursuant to § 226.5b(f)(3)(i) or § 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

(2) *Rules affecting credit card accounts that are not home-secured*—(i) *Changes where written advance notice is required.* For credit card accounts under an open-end (not home-secured) consumer credit plan, except as provided in paragraph (c)(2)(v) of this section, whenever a significant change to an account term as described in paragraph (c)(2)(ii) is made or the required minimum periodic payment is increased, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change.

(ii) *Significant changes in account terms.* The notice requirements of paragraph (c)(2)(i) of this section apply to changes in the following terms:

(A) *Annual percentage rates.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer. For purposes of this paragraph, such rates include any discounted initial rate, premium initial rate, or penalty rate that may be applied to the account.

(B) *Fees for issuance or availability.* Any annual or other periodic fee that may be imposed for the issuance or availability of a credit card account under an open-end (not home-secured) consumer credit plan, including any fee based on account activity or inactivity.

(C) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle. The creditor may, at its option, provide notice in accordance with paragraph (c)(2)(i) of this section for changes in minimum interest charges below this threshold.

(D) *Transaction charges.* Any transaction charge imposed by the creditor for use of the credit card account under an open-end (not home-secured) consumer credit plan for purchases.

(E) *Grace period.* The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period.

(F) *Balance computation method.* The balance computation method that is used to determine the balance on which the finance charge is computed for each feature.

(G) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(H) *Late payment fee.* Any fee imposed for a late payment.

(I) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(J) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(K) *Returned-payment fee.* Any fee imposed by the creditor for a returned payment.

(L) *Required insurance, debt cancellation, or debt suspension coverage.* A fee for insurance described

[10] Reserved.

in § 226.4(b)(7), debt cancellation coverage described in § 226.4(b)(10), or debt suspension coverage written in connection with a credit transaction, if the insurance, debt cancellation coverage, or debt suspension coverage is required as part of the plan.

(iii) *Charges not covered by § 226.9(c)(2)(i).* Except as provided in paragraph (c)(2)(v) of this section, if a creditor increases any component of a charge on a credit card account under an open-end (not home-secured) consumer credit plan, or introduces a new charge, that is not subject to the disclosure requirements under § 226.9(c)(2)(i), a creditor may either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) *Disclosure requirements—changes to terms described in paragraph (c)(2)(i).* If a creditor changes a term described in paragraph (c)(2)(ii) of this section or increases the required minimum periodic payment, the creditor must provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section:

(A) A description of the changes made to terms described in paragraph (c)(2)(ii) of this section or of any increase in the required minimum periodic payment;

(B) A statement that changes are being made to the account;

(C) The date the changes will become effective; and

(D) Except in the case of an increase in the required minimum periodic payment:

(*1*) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(*2*) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(*3*) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

(v) *Notice not required.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; or when the change results from an agreement involving a court proceeding;

(B) When the change is an increase in an annual percentage rate upon the expiration of a specified period of time, provided that:

(*1*) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period; and

(*2*) The annual percentage rate that applies after that period does not exceed the rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this paragraph.

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

(D) When the change is an increase in an annual percentage rate due to the completion of a workout or temporary hardship arrangement by the consumer, provided that:

(*1*) The annual percentage rate applicable to a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(*2*) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to such completion).

(vi) *Reduction of the credit limit.* For credit card accounts under an open-end (not home-secured) consumer credit plan, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

* * * * *

(g) *Increase in rates due to delinquency or default or as a penalty*—(1) *Increases subject to this section.* For credit card accounts under an open-end (not home-secured) consumer credit plan, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) *Timing of written notice.* Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rate at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3) *Disclosure requirements for rate increases.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(i) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

(ii) The date on which the delinquency or default rate or penalty rate will apply;

(iii) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

(iv) A statement that the consumer has the right to reject the increase in the annual percentage rate prior to the effective date of that increase, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(v) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(vi) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

(4) *Exceptions*—(i) *Workout or temporary hardship arrangements.* A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section if a rate applicable to a category of transactions is increased as a result of the consumer's default, delinquency or as a penalty, in each case for failure to comply with the terms of a workout or temporary hardship arrangement between the creditor and the consumer, provided that:

(A) The rate following any such increase does not exceed the rate that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(B) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to such failure).

(ii) *Decrease in credit limit.* A creditor is not required to provide, prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, a notice pursuant to paragraph (g)(1) of this section, provided that:

(A) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(*1*) A statement that the credit limit on the account has been or will be decreased;

(*2*) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(*3*) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(ii)(A)(*2*) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(*4*) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period; and

(B) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph (g)(4)(ii)(A)(*2*) of this section.

(h) *Consumer rejection of significant change in terms or increase in annual percentage rate*—(1) *Right to reject.* If paragraph (c)(2)(iv) or (g)(3) of this section requires disclosure of the consumer's right to reject a significant change to an account term or other increase in an annual percentage rate, the consumer may reject that change or increase by notifying the creditor of the rejection before the effective date of the change or increase.

(2) *Effect of rejection.* If a creditor is notified of a rejection of a significant change to an account term or other increase in an annual percentage rate as provided in paragraph (h)(1) of this section, the creditor must not:

(i) Apply the change or increase to the account;

(ii) Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

(iii) Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the following methods:

(A) The method of repayment for the account on the date on which the creditor was notified of the rejection;

(B) An amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or

(C) A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection.

(3) *Exceptions.* This section does not apply:

(i) When the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment; or

(ii) To transactions that occur more than 14 days after provision of the notice required by paragraphs (c) or (g) of this section.

■ 4. In Supplement I to Part 226 Subpart B:

■ A. Under *Section 226.5—General Disclosure Requirements, paragraph 5(b)(2)(ii):*

■ i. Paragraphs 1., 2., and 3. are revised;

■ ii. Paragraphs 4., 5., and 6. are added.

■ B. Under *Section 226.7—Periodic Statement,* paragraphs 3.iv introductory text and 3.iv.D are revised.

■ C. Under *Section 226.9—Subsequent Disclosure Requirements:*

■ i. Paragraph *9(c)* is revised;

■ ii. Paragraph *9(g) is added;* and

■ iii. Paragraph *9(h)* is added.

Supplement I to Part 226—Official Staff Interpretations

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Subpart B—Open-End Credit

Section 226.5 General Disclosure Requirements.

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5(b) Time of Disclosures.

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5(b)(2) Periodic Statements.

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Paragraph (b)(2)(ii).

1. *Reasonable procedures.* A creditor is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires. For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle.

2. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date. When an account is not eligible or ceases to be eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late for purposes of § 226.5(b)(2)(ii).

3. *Payment due date.* For purposes of § 226.5(b)(2)(ii), ''payment due date'' means the date by which the creditor requires the consumer to make the required minimum periodic payment in order to avoid being treated as late for any purpose, except as set forth in paragraphs i. and ii. below.

i. *Courtesy period following payment due date.* Although the terms of the account agreement may require that payment be made by a certain date, some creditors provide an additional period of time after that date during which a late payment fee will not be assessed. In some cases, this period is set forth in the account agreement while in others it is provided as an informal policy or practice. Regardless, for purposes of § 226.5(b)(2)(ii), the payment due date is the due date according to the legal obligation between the parties, not the end of the additional period of time. For example, if an account agreement for a home equity plan subject to the requirements of § 226.5b provides that payment is due on the first day of the month but a late payment fee will not be assessed if the payment is received by the fifteenth day of the month, the payment due date for purposes of § 226.5(b)(2)(ii) is the first day of the month. Similarly, if a

cardholder agreement provides that payment is due on the fifteenth day of the month but, under the creditor's informal ''courtesy'' period, a late payment fee will not be assessed if the payment is received by the eighteenth day of the month, the payment due date for purposes of § 226.5(b)(2)(ii) is the fifteenth day of the month.

ii. *Laws affecting assessment of late payment and other fees.* Some state or other laws require that a certain number of days must elapse following a due date before a late payment or other fee may be imposed. For example, assume that the account agreement provides that payment is due on the fifteenth day of the month but, under state law, the creditor is prohibited from assessing a late payment fee until the twenty-sixth day of the month. For purposes of § 226.5(b)(2)(ii), the payment due date is the due date according to the legal obligation between the parties (the fifteenth day of the month), not the date before which state law prohibits the imposition of a late payment fee (the twenty-sixth day of the month).

4. *Definition of grace period.* For purposes of § 226.5(b)(2)(ii), ''grace period'' means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. A deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of § 226.5(b)(2)(ii). Similarly, a courtesy period following the payment due date is not a grace period for purposes of § 226.5(b)(2)(ii). *See* comment 5(b)(2)(ii)–3.i.

5. *Consumer request to pick up periodic statements.* When a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. If the consumer wishes to pick up a statement, the statement must be made available in accordance with § 226.5(b)(2)(ii).

6. *Deferred-payment transactions.* See comment 7–3.iv.

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Section 226.7 Periodic Statement

* * * * *

3. * * *

iv. *Free-ride or grace period.* Assuming monthly billing cycles ending at month-end and a free-ride or grace period ending on the 25th of the following month, here are four examples illustrating how a creditor may comply with the requirement to disclose the free-ride or grace period applicable to a deferred payment balance ($500 in this example) and with the 21-day rule for mailing or delivering periodic statements (see § 226.5):

* * * * *

D. If the due date for the deferred payment balance is March 7 (instead of March 31), the creditor could include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 21 days prior to the due date.

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Section 226.9 Subsequent Disclosure Requirements

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9(c) Change in terms.

9(c)(1) Rules affecting home-equity plans and open-end plans that are not credit card accounts.

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase (for example, when an increase may occur under the creditor's contract reservation right to increase the periodic rate). The rules in § 226.5b(f) relating to home-equity plans, however, limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 226.9(c)(1) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (But see § 226.5b(f).)

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 226.6 or increases the minimum payment, unless an exception under § 226.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day free-ride period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(1)(i) Written notice required.

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

i. If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.

ii. If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of § 226.9(c)(1)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(1)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Changes to home-equity plans entered into on or after November 7, 1989.* Section 226.9(c)(1) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home-equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

i. If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

ii. If the minimum payment requirement is changed, the creditor must include the disclosures required by § 226.5b(d)(5)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to § 226.5b(d)(5)(iii), (d)(12)(x) and (d)(12)(xi) for a discussion of representative examples.)

iii. When the terms are changed pursuant to a written agreement as described in § 226.5b(f)(3)(iii), the advance-notice requirement does not apply.

9(c)(1)(ii) Notice not required.

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (But see § 226.5b(f).)

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as ''You may skip your October payment,'' or ''We will waive your finance charges for January,'' may serve as the change-in-terms notice.

9(c)(1)(iii) Notice for home-equity plans.

1. *Written request for reinstatement.* If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(c)(1)(iii) must state that fact.

2. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.

9(c)(2) Rules affecting credit card accounts that are not home-secured.

1. *Changes initially disclosed.* Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

2. *State law issues.* Some issues are not addressed by § 226.9(c)(2) because they are controlled by state or other applicable law. These issues include:

i. The types of changes a creditor may make.

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change affects any of the terms described in § 226.9(c)(2)(i) and (c)(2)(ii), unless an exception under § 226.9(c)(2)(v) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(2)(i) Changes where written advance notice is required.

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 45 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change, if the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of § 226.9(c)(2)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

9(c)(2)(iii) Charges not covered by § 226.9(c)(2)(i).

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, for a credit card account under an open-end (not home-secured) consumer credit plan that is not subject to the disclosure requirements under § 226.9(c)(2)(i), the creditor may either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. For example, a fee for expedited delivery of a credit card is a charge on a credit card account under an open-end (not home-secured) consumer credit plan but is not described in § 226.9(c)(2)(i). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure.

9(c)(2)(iv) Disclosure requirements—changes to terms described in paragraph (c)(2)(i).

1. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(i).

2. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

9(c)(2)(v) Notice not required.

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by § 226.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation.

Otherwise, the creditor must give notice prior to resuming the original schedule or rate even though no notice is required prior to the reduction, unless the creditor has previously provided notice of an increase in the annual percentage rate upon the expiration of a specified period of time in accordance with § 226.9(c)(v)(B).

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate.

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change.

5. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state ''After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate.''

6. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in § 226.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For such programs, a creditor must disclose pursuant to § 226.9(c)(2)(v)(B)(*1*) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 226.9(c)(2)(v)(B)(*1*) include:

i. ''No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%.''

ii. ''No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%.''

7. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in § 226.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 226.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

iii. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

* * * * *

9(g) Increase in rates due to delinquency or default or as a penalty.

1. *Affected consumers.* If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Combining a notice described in § 226.9(g)(1) with a notice described in § 226.9(c)(2)(i).* If a creditor is required to provide notices pursuant to both § 226.9(c)(2)(i) and (g)(1) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

3. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(g).

9(g)(4) Exceptions.

9(g)(4)(i) Workout or temporary hardship arrangements. See comment 9(c)(2)(v)–6.

9(g)(4)(ii) Decrease in credit limit.

1. The following illustrates the requirements of § 226.9(g)(4)(ii). Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4)(ii) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in § 226.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

9(h) Consumer rejection of significant change in terms or increase in annual percentage rate.

9(h)(1) Right to reject.

1. *Reasonable requirements for submission of rejections.* A creditor may establish reasonable requirements for the submission of rejections of a significant change in terms or other increase in an annual percentage rate for a credit card account. For example:

i. It would be reasonable for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number.

ii. It would be reasonable for a creditor to require that rejections be made only using the toll-free telephone number disclosed pursuant to § 226.9(c) or (g). It would also be reasonable for a creditor to designate additional channels for the submission of rejections (such as an address for rejections submitted by mail) so long as the creditor does not require that rejections be submitted through such additional channels.

iii. It would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to § 226.9(c) or (g) and to treat the account as not subject to § 226.9(h) if a rejection is received on or after that date. It would not, however, be reasonable to require that rejections be submitted earlier than the day before the effective date. If a creditor is unable to process all rejections received before the effective date, the creditor may delay implementation of the change in terms or rate increase until all rejections have been processed. In the alternative, the creditor could implement the change or increase on the effective date and then, on any account for which a timely rejection was received, reverse the change or increase and remove or credit any interest charges or fees imposed as a result of the change or increase. For example, if the effective date for a rate increase is June 15 and the creditor cannot process all rejections received by telephone on June 14 until June 16, the creditor may delay imposition of the rate increase until June 17. Alternatively, the creditor could impose the increased rate on all affected accounts on June 15 and then, once all rejections have been processed, return any account for which a timely rejection was received to the prior rate and ensure that the account is not assessed any additional interest as a result of the increased rate or that the account is credited for such interest.

2. *Use of account following provision of notice.* A consumer does not waive or forfeit the right to reject a significant change in terms or a rate increase by using the account for transactions prior to the effective date of the change or increase. Similarly, a consumer does not revoke a rejection by using the account for transactions after the rejection is received. If, however, the account is used for a transaction more than 14 days after provision of the § 226.9(c) or (g) notice, § 226.9(h)(3)(ii) permits the creditor to apply the changed term or increased rate to that transaction even if the consumer rejects the change or increase before the effective date. *See* example in comment 9(h)(3)(ii)–3.i.

9(h)(2)(i) Prohibition on applying changed term or increased rate.

1. *Application to promotional rates and deferred interest and similar programs.* Section 226.9(h)(2)(i) provides that, when a creditor is notified of a rejection of a significant change to an account term or other increase in an annual percentage rate as provided in § 226.9(h)(1), the creditor must not apply the change or increase to the account. However, § 226.9(h)(2)(i) does not prohibit a creditor from applying the terms of a pre-existing promotional rate or deferred interest or similar program. The following examples illustrate the application of § 226.9(h)(2)(i) in these circumstances:

i. *Promotional rates.* Assume that a credit card account is opened on January 1 of year one and that, on December 31 of year one, the creditor notifies the consumer of the following promotional rate offer: A non-variable annual percentage rate of 5% will

apply to purchases for nine months (from January 1 through September 30 of year two) and, beginning on October 1, the rate for purchases will increase to a non-variable rate of 15%. The required minimum periodic payment due on July 5 is not received by the creditor until July 15. On July 15, the account has a purchase balance of $1,000 at the 5% rate. On that same date, the creditor provides a notice pursuant to § 226.9(g) informing the consumer that, consistent with the terms of the cardholder agreement, the rate on the $1,000 balance and for new purchases will increase to a 30% penalty rate on August 29. The notice further states that the consumer may reject the increase by calling a specified toll-free telephone number before August 29 but that, if the consumer does so, credit availability for the account will be terminated. On July 31, the consumer calls the toll-free telephone number and rejects the increase. Section 226.9(h)(2)(i) prohibits the creditor from increasing the rate applicable to the $1,000 balance at this time. However, consistent with the terms of the promotional rate offer, § 226.9(h)(2)(i) does not prohibit the creditor from beginning to accrue interest on any remaining portion of the $1,000 balance at 15% on October 1. Furthermore, pursuant to § 226.9(c)(2)(v)(B), the creditor is not required to provide advance notice of this increase.

ii. *Deferred interest and similar programs.* Assume that a credit card account is opened on January 1 of year one and that, on December 31 of year one, the creditor notifies the consumer of the following promotional program: Interest on purchases made during the months of January through June of year two will accrue at a non-variable annual percentage rate of 15% but the consumer will not be obligated to pay that accrued interest if all required minimum periodic payments are received by the creditor on or before the payment due date and all purchases made during the six-month period are paid in full by December 31 of year two. On January 15 of year two, the consumer uses the account for a $1,000 purchase. The payment due on September 1 of year two is not received by the creditor until September 15. On that same date, the creditor provides a notice pursuant to § 226.9(g) informing the consumer that on October 30, consistent with the terms of the promotional program, interest accrued on the $1,000 purchase at 15% since January 15 will be added to the outstanding balance account. The notice also states that the consumer may reject the addition of accrued interest to the outstanding balance by calling a specified toll-free telephone number before October 30 but that, if the consumer does so, credit availability for the account will be terminated. On October 1, the consumer calls the toll-free telephone number and exercises the right to reject. Section 226.9(h)(2)(i) prohibits the creditor from adding the accrued interest to the outstanding balance at this time. However, on January 1 of year three, § 226.9(h)(2)(i) does not prohibit the creditor from, consistent with the terms of the promotional program, adding interest accrued on the $1,000 purchase at 15% since January 15 of year two to the outstanding balance if the $1,000 purchase is not paid in full by December 31 of year two. Furthermore, pursuant to § 226.9(c)(2)(v)(B), the creditor is not required to provide advance notice of this increase.

9(h)(2)(ii) Prohibition on penalties.

1. *Solely as a result of rejection.* A creditor is prohibited from imposing a fee or charge or treating an account as in default solely as a result of the consumer's rejection of a significant change in terms or a rate increase. For example, a creditor is prohibited from imposing a monthly maintenance fee that would be charged only if the consumer rejected the change or increase. A creditor is not, however, prohibited from continuing to charge a fee that was charged before the rejection. For example, a creditor that charged a periodic fee or a fee for late payment before a change or increase was rejected is not prohibited from charging those fees after rejection of the change or increase.

2. *Termination of credit availability.* Section 226.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability if the consumer rejects a significant change in terms or a rate increase. If, however, the creditor elects not to terminate or suspend credit availability for consumers who reject a change or increase, § 226.9(h)(3)(ii) permits the creditor to apply the changed term or increased rate to transactions that occur more than 14 days after provision of the § 226.9(c) or (g) notice. *See* example in comment 9(h)(3)(ii)–3.ii.

9(h)(2)(iii) Repayment of outstanding balance.

1. *No less beneficial to the consumer.* A creditor may provide a method of repaying the balance subject to § 226.9(h)(2)(iii) that is different from the methods listed in § 226.9(h)(2)(iii) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account prior to the date on which the creditor received the rejection. Similarly, a method is no less beneficial to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 226.9(h)(2)(iii)(C). For example:

i. If at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or $20 (whichever is greater), the creditor may require the consumer to make a minimum payment of $20 even if doing so would pay off the balance in less than five years or constitute more than 2% of the balance plus fees and interest charges.

ii. A creditor could increase the percentage of the balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the balance in less than five years.

iii. A creditor could require the consumer to make a required minimum periodic payment that amortizes the balance in four years so long as doing so would not more than double the percentage of the balance included in the minimum payment prior to the date on which the creditor was notified of the rejection.

9(h)(2)(iii)(B) Five-year amortization period.

1. *Amortization period starting from date on which creditor was notified of rejection.* Section 226.9(h)(2)(iii)(B) provides for an amortization period for the balance subject to § 226.9(h)(2)(iii) of no less than five years, beginning no earlier than the date on which the creditor was notified of the rejection. A creditor is not required to recalculate the required minimum periodic payment for the balance if, during the amortization period, the balance is reduced as a result of payments by the consumer in excess of that minimum payment.

2. *Amortization when applicable rate is variable.* If the annual percentage rate that applies to the balance subject to § 226.9(h)(2)(iii) varies with an index, the creditor may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a balance subject to § 226.9(h)(2)(iii) and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the creditor may increase the required minimum periodic payment to include the additional interest charges.

9(h)(2)(iii)(C) Doubling repayment rate.

1. *Example.* Assume that the method used by a creditor to calculate the required minimum periodic payment for a credit card account requires the consumer to pay either the total of fees and accrued interest charges plus 2% of the total amount owed or $50, whichever is greater. Assume also that, on the date on which the creditor is notified of the rejection, the account has a balance subject to § 226.9(h)(2)(iii) of $2,000. Following rejection, § 226.9(h)(2)(iii)(C) permits the creditor to require the consumer to pay fees and interest plus 4% of the $2,000 balance or $50, whichever is greater.

9(h)(3) Exceptions.

1. *Additional circumstances in which § 226.9(h) does not apply.* As a general matter, § 226.9(h) applies when § 226.9(c)(2)(iv) or (g)(3) require disclosure of the consumer's right to reject a significant change to an account term or other increase in an annual percentage rate. Accordingly, in addition to the circumstances listed in § 226.9(h)(3), § 226.9(h) does not apply to home equity plans subject to the requirements of § 226.5b that are accessible by a credit or charge card because § 226.9(c)(2) and 226.9(g) do not apply to such plans. Similarly, § 226.9(h) does not apply when the required minimum periodic payment is increased because § 226.9(c)(2)(iv) does not require disclosure of the right to reject in those circumstances.

9(h)(3)(i) Delinquencies of more than 60 days.

1. *Examples.* Section 226.9(h)(3)(i) provides that § 226.9(h) does not apply when

the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. The following examples illustrate the application of this exception:

i. *Account becomes more than 60 days delinquent before notice provided.* Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On June 20 of year two, the account has a purchase balance of $5,000 at a non-variable annual percentage rate of 17% and the creditor has not received the required minimum periodic payments due on April 15, May 15, and June 15. On June 20, the creditor provides a notice pursuant to § 226.9(g) informing the consumer that, consistent with the terms of the cardholder agreement, the rate for the $5,000 balance and for new purchases will increase to a non-variable penalty rate of 28% on August 4. Because the creditor has not received the April 15 minimum payment within 60 days after the due date, the exception in § 226.9(h)(3)(i) applies and the consumer may not reject the rate increase. Even if the consumer closes or cancels the account before August 4, the creditor may apply the increased rate to the $5,000 balance.

ii. *Account becomes more than 60 days delinquent after rejection.* Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On April 20 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 15% and the creditor has not received the required minimum periodic payment due on April 15. On April 20, the creditor provides a notice pursuant to § 226.9(g) informing the consumer that, consistent with the terms of the cardholder agreement, the rate for the $2,000 balance and for new purchases will increase to a non-variable penalty rate of 28% on June 4. The notice further states that the consumer may reject the increase by calling a specified toll-free telephone number before June 4 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free telephone number and rejects the increase. On June 4, § 226.9(h) prohibits the creditor from applying the 28% rate to the $2,000 balance. If, however, the creditor does not receive the minimum payments due on April 15 and May 15 by June 15, § 226.9(h)(3)(i) permits the creditor to increase the rate that applies to the $2,000 balance. The creditor must comply with the notice requirements of § 226.9(g), but the consumer may not reject the increase. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) no longer apply to the $2,000 balance.

9(h)(3)(ii) Transactions that occur more than 14 days after provision of notice.

1. *Application of § 226.9(h)(3)(ii).* Section 226.9(h)(3)(ii) permits a creditor to apply a changed term or increased rate to transactions that occur more than 14 days after provision of the notice required by § 226.9(c) or (g). Section 226.9(h)(3)(ii) does not, however, permit a creditor to reach back to days before the effective date of the change in terms or rate increase when calculating interest charges. *See* examples in comment 9(h)(3)(ii)–3. Furthermore, because the exception in § 226.9(h)(3)(ii) is limited to changed terms and increased rates that can be applied to transactions, it does not permit a creditor to apply a changed term to the entire account simply because the account was used for a transaction more than 14 days after provision of a § 226.9(c) or (g) notice. For example, if a consumer rejects an increase in a periodic fee or late payment fee, the creditor is prohibited from applying the increased fee to the account even if the account is used for a transaction more than 14 days after provision of the § 226.9(c) notice. In contrast, § 226.9(h)(3)(ii) does permit a creditor to apply an increased rate or a transaction fee to a transaction that occurred more than 14 days after provision of the § 226.9(c) or (g) notice so long as that increased rate or transaction fee is not applied to other transactions. *See* examples in comment 9(h)(3)(ii)–3.

2. *More than 14 days after provision of notice.* Whether a transaction occurred prior to provision of a notice or within 14 days after provision of a notice is generally determined by the date of the transaction. However, if a transaction that occurred within 14 days after provision of the notice is not charged to the account prior to the effective date of the change or increase, the creditor may treat the transaction as occurring more than 14 days after provision of the notice for purposes of § 226.9(h)(3)(ii). *See* example in comment 9(h)(3)(ii)–3.iv. In addition, when a merchant places a ''hold'' on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.9(h)(3)(ii) is the date on which the actual transaction amount is charged to the account. *See* example in comment 9(h)(3)(ii)-3.iii.

3. *Examples.* The following examples illustrate the application of § 226.9(h)(3)(ii):

i. *Use of account after notice provided.* Assume that a credit card account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 15%. On March 15, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that the rate for the $2,000 balance and for new purchases will increase to a non-variable rate of 18% on April 30. The notice further states that the consumer may reject the increase by calling a specified toll-free telephone number before April 30 but that, if the consumer does so, credit availability for the account will be terminated. The fourteenth day after provision of the notice is March 29 and, on that date, the consumer makes a $200 purchase. On March 30, the consumer makes a $500 purchase. On April 1, the consumer calls the toll-free telephone number and rejects the increase. On April 5, a $150 automated recurring charge is honored by the creditor. On April 30, § 226.9(h)(3)(ii) permits the creditor to begin accruing interest at 18% on the $500 purchase made on March 30 and the $150 transaction made on April 5. The creditor may not, however, apply the 18% rate to the $2,200 purchase balance as of March 29 because that balance reflects transactions that occurred prior to or within 14 days of the provision of the § 226.9(c) notice. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) apply to the $2,200 purchase balance as of March 29 but not the $500 purchase made on March 30 and the $150 charge made on April 5.

ii. *Credit availability not terminated after rejection.* Same facts as paragraph i. above except that the § 226.9(c) notice does not state that the creditor will terminate credit availability if the consumer rejects the increase, which the consumer does on April 1. On April 30, § 226.9(h)(3)(ii) permits the creditor to begin accruing interest at 18% on the $500 purchase made on March 30 and the $150 transaction made on April 5. The creditor may not, however, apply the 18% rate to the $2,200 purchase balance as of March 29 because that balance reflects transactions that occurred prior to or within 14 days of the provision of the § 226.9(c) notice. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) apply to the $2,200 purchase balance as of March 29 but not the $500 purchase made on March 30 and the $150 charge made on April 5.

iii. *Hold on available credit.* Assume that a credit card account is opened on January 1 of year one. On September 14 of year two, the account has a purchase balance of $1,000 at a non-variable annual percentage rate of 17%. On September 15, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that the rate for the $1,000 balance and for new purchases will increase to a non-variable rate of 20% on October 30. The notice further states that the consumer may reject the increase by calling a specified toll-free telephone number before October 30 but that, if the consumer does so, credit availability for the account will be terminated. The fourteenth day after provision of the notice is September 29. On that date, the consumer uses the credit card to check into a hotel and the hotel obtains authorization for a $750 hold on the account to ensure there is adequate available credit to cover the anticipated cost of the stay. On October 1, the consumer calls the toll-free telephone number and rejects the increase. When the consumer checks out of the hotel on October 2, the actual cost of the stay is $850 because of additional incidental costs. On October 2, the $850 transaction is charged to the account by the hotel and honored by the creditor. For purposes of § 226.9(h)(3)(ii), the transaction occurred on October 2.

iv. *Transaction charged to account after effective date.* Same facts as paragraph iii. above except that the $850 transaction is not charged to the account by the hotel until November 1. For purposes of § 226.9(h)(3)(ii), the creditor may treat the transaction as occurring more than 14 days after provision of the § 226.9(c) notice (*i.e.,* after September 29).

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 15, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–17195 Filed 7–21–09; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133–AD57

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its Truth in Savings rule and official staff interpretation to remove the provisions regarding the electronic delivery of disclosures. The official staff interpretations are amended to include guidance on electronic disclosures. Additionally, NCUA is amending the rule to require all credit unions to disclose aggregate overdraft fees on periodic statements regardless of whether they promote the payment of overdrafts. The final rule also addresses account balance disclosures provided to members through automated systems.

DATES: This rule is effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Moisette Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA) requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve Board (FRB). 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they pay dividends on member accounts. In March 2009, NCUA proposed amendments to its TISA rule to align it with recent changes the Federal Reserve Board made to Regulation DD. *See* 74 FR 13129 (March 26, 2009).

As required by the Truth in Savings Act (TISA), NCUA proposed to amend its TISA rule and official staff interpretation to align it with the Federal Reserve Board's Regulation DD. Specifically, the proposed rule contained the provisions and guidance on the electronic delivery of disclosures. Additionally, NCUA proposed to amend the rule and the official staff commentary to require all credit unions to disclose aggregate overdraft fees on periodic statements. The proposed rule also addressed balance disclosures credit unions provide to members through automated systems.

II. Comments and the Final Rule

NCUA is adopting the rule as it was proposed with minor changes. Specifically, the final rule amends § 707.1 to include the Office of Management and Budget approval number for the information collections in the rule and includes a minor technical correction to the sample form in Appendix B–12 for formatting purposes.

NCUA received comments from two credit unions and two trade associations. One credit union supported the proposal to withdraw the provisions regulating electronic delivery of disclosures under TISA and to permit electronic disclosures in accordance with the E–Sign Act, but opposed the proposed amendments that would require all credit unions to disclose the aggregate periodic and year-to-date fees charged to a member account for overdraft services. The credit union commented the amendment would be burdensome and act as a disincentive to credit unions that do not advertise or market overdraft programs to their members. NCUA must issue TISA rules that are substantially similar to Regulation DD, 12 CFR Part 230, unless the unique nature of credit unions and their payment of dividends call for different regulations. *See* 12 U.S.C. 4311(b). The Board concludes the nature of credit unions and the payment of dividends do not give it reason to issue regulations regarding overdraft fees and the electronic delivery of disclosures that differ from Regulation DD.

The second credit union commenter requested a final rule become effective no earlier than January 1, 2010, to give credit unions sufficient time to make the necessary operational changes and educate members. The Board is aware that credit unions have anticipated amendments to Part 707 since the Federal Reserve Board issued amendments to Regulation DD in December 2008. Therefore, the Board is issuing this final rule with an effective date of January 1, 2010.

One trade association supported the proposed amendments regarding electronic disclosures, but had concerns with the provisions involving disclosure of overdraft fees. It does not believe the benefit of the rule would outweigh the burden. To mitigate the burden, the trade association suggested permitting members to request the aggregate overdraft fee disclosures instead of requiring credit unions to provide them to all members. Additionally, it encouraged NCUA to differentiate between overdraft fees resulting from credit unions paying funds to cover an overdraft as a courtesy and fees that result from a credit union's contractual obligation to pay a transaction, such as under an agreement with VISA or MasterCard. The trade association believes credit unions should be required to disclose the fees resulting from a courtesy payment, but not the fees that stem from a contractual obligation. Another trade association supported the provisions that would exclude funds in an overdraft program from a member's available balance disclosed in response to a balance inquiry on an automated system and that address electronic disclosures, but questioned the need for the amendments to the overdraft fee disclosures.

The final rule requires all credit unions to disclose periodic and aggregate year-to-date overdraft fees on periodic statements, regardless of whether they advertise or promote member use of overdraft services. Under the current TISA regulation, credit unions that provide periodic statements must disclose fees or charges imposed on a member account during the statement period. 12 CFR 707.6(a)(3). Further, credit unions that promote the payment of overdrafts in an advertisement must also disclose the aggregate totals for overdraft fees and returned item fees for both the statement period and calendar year-to-date. 12 CFR 707.11(a). The rule eliminates the distinction between credit unions that promote overdraft services and those that do not, and requires all credit unions offering overdraft services to disclose the fees imposed for the payment of overdrafts for each statement period and the year-to-date aggregate. The amendment also eliminates the confusion surrounding the distinction between marketing and educational materials for purposes of determining when to disclose the year-to-date fees.

Additionally, credit unions are not required to offer overdraft services and may restrict the payment of overdrafts on debit card or point-of-sale transactions. Credit unions generally impose a fee for overdraft services regardless of whether the payment of an overdraft is a courtesy or results from a contractual obligation. To inform members about the fees charged for using discretionary overdraft services

and to help them better understand the costs associated with their accounts, the rule requires all credit unions to disclose the aggregate fee information for the statement period and calendar year-to-date.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. 5 U.S.C. 603(a). For purposes of this analysis, NCUA considers credit unions having under $10 million in assets small entities. Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003). As of March 31, 2009, out of 7,749 federally insured credit unions, 3,335 had less than $10 million in assets.

NCUA prepared a regulatory flexibility analysis as a part of the proposed rule issued in March 2009. 74 FR 13129, 13135 (March 26, 2009). The Board received no comments addressing how the rule would affect small credit unions.

This final rule aligns NCUA's regulation with the Federal Reserve Board's Regulation DD, as required under TISA. TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow consumers to make meaningful comparisons between different financial institutions and also allow consumers to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1), 4311(b). The Board is adopting revisions to part 707 to address the uniformity and adequacy of credit unions' disclosure of fees associated with overdraft services. Additionally, the rule eliminates the regulatory burden associated with credit unions providing disclosures to their members through electronic means.

Credit unions must consider other laws when administering an overdraft protection program. Although other laws and regulations may apply to a credit union's payment of overdrafts, the final revisions to part 707 do not duplicate or conflict with the requirements imposed by these laws. The Board has also considered the interagency guidance on overdraft protection programs issued in February 2005 and has determined that issuance of the final revisions to part 707 is consistent with the interagency guidance. 70 FR 9127 (February 24, 2005).

This final rule directly affects all credit unions that offer overdraft services or provide electronic disclosures. While NCUA does know how many credit unions provide electronic disclosures, it estimates 2,782 credit unions offer overdraft services other than a traditional line of credit, and 226 of them are small credit unions. Therefore, NCUA has determined this final rule will not have an impact on a substantial number of small entities.

Additionally, NCUA has determined the economic impact on small credit unions affected by the final rule will not be significant. NCUA expects the rule will increase the paperwork burden for disclosing overdraft fees and eliminate the burden for electronic delivery of disclosures. Therefore, the economic impact, if any, will be minimal. A majority of credit unions use software vendors to provide the disclosures required under TISA and the implementing regulations. The vendors routinely provide updates to software and other products to credit unions to ensure compliance with regulatory requirements under the terms of the service contract. NCUA expects credit unions employing a third party vendor to provide TISA disclosures will incur minimal additional costs, if any. Accordingly, the Board certifies this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the Board has submitted the information collection requirements contained in this final rule to the Office of Management and Budget (OMB). The NCUA may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The current OMB control number for the Truth in Savings program is 3133–0134. This information collection has been revised to include the requirements of this final rule. The proposed rule contained a discussion of the revised information collection. 74 FR 13129, 13136 (March 26, 2009). OMB approval is pending.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within OMB, is reviewing this final rule for purposes of SBREFA, and a determination is pending.

Executive Order 13132

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

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

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

By the National Credit Union Administration Board on July 16, 2009.

Mary F. Rupp,

Secretary of the Board.

List of Subjects in 12 CFR Part 707

Advertising, Credit unions, Consumer protection, Reporting and recordkeeping requirements, Truth in Savings.

■ For the reasons set forth in the preamble, NCUA amends 12 CFR Part 707 and the Official Staff Commentary as set forth below:

PART 707—TRUTH IN SAVINGS

■ 1. The authority citation for part 707 continues to read as follows:

Authority: 12 U.S.C. 4311.

■ 2. Section 707.1 is amended by revising paragraph (a) to read as follows:

§ 707.1 Authority, purpose, coverage, and effect on state laws.

(a) *Authority.* This regulation is issued by the National Credit Union Administration to implement the Truth in Savings Act of 1991 (TISA),

contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 3201 *et seq.,* Pub. L. 102–242, 105 Stat. 2236. Information collection requirements in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3133–0134.

* * * * *

■ 3. Section 707.3 is amended by revising paragraph (a) and removing paragraph (g) to read as follows:

§ 707.3 General disclosure requirements.

(a) *Form.* Credit unions must make the disclosures required by §§ 707.4 through 707.6 of this part, as applicable, clearly and conspicuously, in writing, and in a form the member or potential member may keep. Credit unions may provide the disclosures required by this part to a member or potential member in electronic form, subject to compliance with the consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act), 15 U.S.C. 7001 *et seq.* Credit unions may provide the disclosures required by §§ 707.4(a)(2) and 707.8 to a member or potential member in electronic form without regard to the consent or other provisions of the E–Sign Act in the circumstances set forth in those sections. Disclosures for each account offered by a credit union may be presented separately or combined with disclosures for the credit union's other accounts, as long as it is clear which disclosures are applicable to the member or potential member's account.

* * * * *

■ 4. Section 707.4 is amended by revising paragraph (a)(1) and (a)(2)(i), to read as follows:

§ 707.4 Account disclosures.

(a) *Delivery of account disclosures*—(1) *Account opening.* (i) *General.* A credit union must provide account disclosures to a member or potential member before an account is opened or a service is provided, whichever is earlier. A credit union is deemed to have provided a service when a fee required to be disclosed is assessed. Except as provided in paragraph (a)(1)(ii) of this section, if a member or potential member is not present at the credit union when the account is opened or the service is provided and has not already received the disclosures, the credit union must mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

(ii) *Timing of electronic disclosures.* If a member or potential member who is not present at the credit union uses electronic means, for example, an internet Web site, to open an account or request a service, the disclosures required under paragraph (a)(1) of this section must be provided before the account is opened or the service is provided.

(2) *Requests.* (i) A credit union must provide account disclosures to a member or potential member upon request. If a member or potential member who is not present at the credit union makes a request, the credit union must mail or deliver the disclosures within a reasonable time after it receives the request and may provide the disclosures in paper form or electronically if the member or potential member agrees.

* * * * *

§ 707.10 [Reserved]

■ 5. Section 707.10 is removed and reserved.

■ 6. Section 707.11 is amended by revising the heading, paragraphs (a), (b)(2)(x) and (b)(2)(xi), and adding paragraphs (b)(2)(xii) and (c) to read as follows:

§ 707.11 Additional disclosure requirements for overdraft services.

(a) *Disclosure of total fees on periodic statements.* (1) *General.* A credit union must separately disclose on each periodic statement, as applicable:

(i) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn; and

(ii) The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

(2) *Totals required.* The disclosures required by paragraph (a)(1) of this section must be provided for the statement period and for the calendar year-to-date.

(3) *Format requirements.* The aggregate fee disclosures required by paragraph (a) of this section must be disclosed in close proximity to fees identified under § 707.6(a)(3), using a format substantially similar to Sample Form B–10 in appendix B.

(b) * * *

(2) * * *

(x) a notice provided to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;

(xi) informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service; or

(xii) an opt-out or opt-in notice regarding the credit union's payment of overdrafts or provision of discretionary overdraft services.

* * * * *

(c) *Disclosure of account balances.* If a credit union discloses balance information to a member through an automated system, the balance may not include additional amounts that the credit union may provide to cover an item when there are insufficient or unavailable funds in the member's account, whether under a service provided in its discretion, a service subject to part 226 of this title (Regulation Z), or a service to transfer funds from another member account. The credit union may, at its option, disclose additional account balances that include such additional amounts, if the credit union prominently states that any such balance includes such additional amounts and, if applicable, that additional amounts are not available for all transactions.

■ 7. Amend Appendix B to part 707, by adding B–12 to read as follows:

Appendix B to Part 707—Model Clauses and Sample Forms

* * * * *

B–12 AGGREGATE OVERDRAFT AND RETURNED ITEM FEES SAMPLE FORM

	Total for this period	Total year-to-date
Total Overdraft Fees	$60.00	$150.00
Total Returned Item Fees	0.00	30.00

■ 8. In Appendix C to Part 707, the following amendments are made:

■ a. In *Section 707.4—Account disclosures,* under (a)(2)(i), paragraphs 3. and 4. are revised.

■ b. In *Section 707.8—Advertising,* under *(a) Misleading or inaccurate advertisements,* paragraph 9. is revised and new paragraph 11. is added.

■ c. In *Section 707.8—Advertising,* under *(b) Permissible rates,* paragraph 4. is removed.

■ d. In *Section 707.8—Advertising,* under (e)(1)(i), paragraph 1. is revised.

■ e. *Section 707.10—Electronic Communication* is removed and reserved.

■ f. In *Sections 707.11, revise the section heading and the headings for paragraphs (a) and (a)(1)* and remove (a)(1)–2g. In *Section 707.11,* paragraphs (a)(1)–3. through (a)(1)–8. are redesignated as paragraphs (a)(1)–1. through (a)(1)–6, respectively.

■ h. In *Section 707.11,* new paragraphs (a)(1)–2. through (a)(1)–4 are revised.

■ i. In *Section 707.11,* paragraph (a)(3)–1. is revised.

■ j. In *Section 707.11,* paragraph (a)(5)–1. is removed.

■ k. In *Section 707.11,* new paragraphs (c)–1. through (c)–3. are added.

The amendments read as follows:

Appendix C to Part 707—Official Staff Interpretations

* * * * *

Section 707.4—Account Disclosures

(a) Delivery of Account Disclosures

* * * * *

(a)(2) Requests

(a)(2)(i)

* * * * *

3. *Timing for response.* Ten business days is a reasonable time for responding to requests for account information that members or potential members do not make in person, including requests made by electronic means, such as by electronic mail.

4. *Use of electronic means.* If a member or potential member who is not present at the credit union makes a request for account disclosures, including a request made by telephone, e-mail, or via the credit union's Web site, the credit union may send the disclosures in paper form or, if the member or potential member agrees, may provide the disclosures electronically, such as to an e-mail address that the member or potential member provides for that purpose, or on the credit union's Web site, without regard to the consent or other provisions of the E–Sign Act. The regulation does not require a credit union to provide, nor a member or potential member to agree to receive, the disclosures required by § 707.4(a)(2) in electronic form.

* * * * *

Section 707.8—Advertising

(a) Misleading or Inaccurate Advertisements

* * * * *

9. *Electronic advertising.* If an electronic advertisement, such as an advertisement appearing on an internet Web site, displays a triggering term, such as a bonus or annual percentage yield, the advertisement must clearly refer the member to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the member to the additional information.

* * * * *

11. *Additional disclosures in connection with the payment of overdrafts.* The rule in § 707.3(a), providing that disclosures required by § 707.8 may be provided to the member in electronic form without regard to E–Sign Act requirements, applies to the disclosures described in § 707.11(b), which are incorporated by reference in § 707.8(f).

* * * * *

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

(e)(1)(i)

1. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to advertisements posted on the internet or sent by e-mail.

* * * * *

Section 707.11 Additional disclosures regarding the payment of overdrafts

(a) Disclosure of total fees on periodic statements

(a)(1) General

* * * * *

2. *Fees for paying overdrafts.* Credit unions must disclose on periodic statements a total dollar amount for all fees or charges imposed on the account for paying overdrafts. The credit union must disclose separate totals for the statement period and for the calendar year-to-date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another member account to avoid an overdraft, or fees charged under a service subject to part 226 of this title (Regulation Z).

3. *Fees for returning items unpaid.* The total dollar amount for all fees for returning items unpaid must include all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The credit union must disclose separate totals for the statement period and for the calendar year-to-date. Fees imposed when deposited items are returned are not included. Credit unions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe fees for returning items unpaid.

4. *Waived fees.* In some cases, a credit union may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Credit unions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if a credit union assesses a fee in January and refunds the fee in February, the credit union could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. If a credit union assesses and then waives and credits a fee within the same cycle, the credit union may, at its option, reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. Thus, if the credit union assesses and waives the fee in the February statement period, the February fee total could reflect a total net of the waived fee.

* * * * *

(a)(3) Time period covered by disclosures

1. *Periodic statement disclosures.* The disclosures under § 707.11(a) must be included on periodic statements provided by a credit union starting with the first statement period that begins after January 1, 2010. For example, if a member's statement period typically closes on the 15th of each month, a credit union must provide the disclosures required by § 707.11(a)(1) on subsequent periodic statements for that member beginning with the statement reflecting the period from January 16, 2010 to February 15, 2010.

* * * * *

(c) Disclosure of account balances

1. *Balance that does not include additional amounts.* For purposes of the balance disclosure requirement in § 707.11(c), if a credit union discloses balance information to a member through an automated system, it must disclose a balance that excludes any funds the credit union may provide to cover an overdraft pursuant to a discretionary overdraft service that will be paid by the credit union under a service subject to part 226 of this title (Regulation Z) or that will be transferred from another account held individually or jointly by a member. The balance may, but need not, include funds that are deposited in the member's account, such as from a check, that are not yet made available for withdrawal in accordance with the funds availability rules under part 229 of the title (Regulation CC). In addition, the balance may, but need not, include funds that are held by the credit union to satisfy a prior obligation of the member, for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the credit union has not settled.

2. *Additional balance.* The credit union may disclose additional balances supplemented by funds that may be provided by the credit union to cover an overdraft, whether pursuant to a discretionary overdraft service, a service subject to part 226 of this title (Regulation Z), or a service that transfers

funds from another account held individually or jointly by the member, so long as the credit union prominently states that any additional balance includes these additional overdraft amounts. The credit union may not simply state, for instance, that the second balance is the member's ''available balance,'' or contains ''available funds.'' Rather, the credit union should provide enough information to convey that the second balance includes these amounts. For example, the credit union may state that the balance includes ''overdraft funds.'' Where a member has opted out of the credit union's discretionary overdraft service, any additional balance disclosed should not include funds credit unions provide under that service. Where a member has opted out of the credit union's discretionary overdraft service for some, but not all transactions, *e.g.,* the member has opted out of overdraft services for ATM and debit card transactions, a credit union that includes funds from its discretionary overdraft service in the balance should convey that the overdraft funds are not available for all transactions. For example, the credit union could state that overdraft funds are not available for ATM and debit card transactions.

3. *Automated systems.* The balance disclosure requirement in § 707.11(c) applies to any automated system through which the member requests a balance, including, but not limited to, a telephone response system, the credit union's Internet site, or an ATM. The requirement applies whether the credit union discloses a balance through an ATM owned or operated by the credit union or through an ATM not owned or operated by the credit union, including an ATM operated by an entity that is not a financial institution. If the balance is obtained at an ATM, the requirement also applies whether the balance is disclosed on the ATM screen or on a paper receipt.

* * * * *

[FR Doc. E9–17313 Filed 7–21–09; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115 and 121

RIN 3245–AF94

American Recovery and Reinvestment Act: Surety Bond Guarantees; Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements provisions of the American Recovery and Reinvestment Act of 2009 that pertain to the Surety Bond Guaranty (SBG) Program. Until September 30, 2010, the U.S. Small Business Administration (SBA) is authorized to guarantee bonds on Contracts of up to $5,000,000 (or up to $10 million based upon the certification of a Federal contracting officer). SBA is further authorized, until September 30, 2010, to partially deny liability under its bond guarantee, but cannot deny liability in whole or even in part on the basis of material facts disclosed to SBA in a guarantee application submitted under the Prior Approval Program. In addition to implementing these authorities, this rule also revises the size standard for participation in the SBG Program, and makes several changes primarily for clarification purposes.

DATES: This rule is effective July 22, 2009.

Comment Date: Comments must be received on or before August 21, 2009.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF94, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Surety Guarantees, Suite 8600, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416 or send an email to Office of Surety Guarantees. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Barbara J. Brannan, Office of Surety Guarantees, 202–205–6545.

SUPPLEMENTARY INFORMATION:

I. Background Information.

The American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, was enacted on February 17, 2009 to, among other things, promote economic activity by preserving and creating jobs and assisting those most impacted by the severe economic conditions facing the nation. The U.S. Small Business Administration is one of several agencies that will play a role in achieving these goals. As part of its recovery efforts, SBA will make several changes to the Agency's SBG program, which will provide an enhanced level of benefits to the small business contractors and Surety companies that participate in the program. Under the SBG program SBA guarantees bid, payment and performance bonds for small contractors who cannot obtain bonds through regular commercial channels. SBA's guarantee gives Surety Companies an incentive to provide bonding for small businesses, and thereby assists small businesses in gaining greater access to contracting opportunities.

The various modifications to the SBG program as a result of the Recovery Act are temporary in nature and will expire on September 30, 2010. These modifications include an increase in the amount of the Contract or Order for which SBA is authorized to guarantee bonds; and revised standards for denial of liability on claims, and determining whether the small business contractor qualifies for a Recovery Act guaranteed bond. This interim final rule implements these changes and others as described in the following section-by-section analysis.

II. Section-by-Section Analysis

A new defined term, ''Applicable Statutory Limit'', has been added to § 115.10. Currently, §§ 115.12(e)(1) and (3), 115.19(a), 115.31(d) and 115.68 all state that ''$2,000,000'' is the maximum dollar amount of a Contract for which SBA is authorized to guarantee bonds. Substitution of ''Applicable Statutory Limit'' for ''$2,000,000'' in each of these provisions will make future amendments unnecessary each time the statutory limit is revised.

The definition of ''Applicable Statutory Limit'' also makes it clear that for any particular bond the Applicable Statutory Limit is the statutory limit in effect at the time a Prior Approval Surety's request for a bond guarantee is approved by SBA or a Preferred Surety executes a bond, without regard to any subsequent changes in that limit. However, if SBA guaranteed a Bid Bond, the Applicable Statutory Limit for the related Final Bonds, including Ancillary Bonds, is the one in effect when SBA guaranteed the Bid Bond.

The Recovery Act temporarily raises the Applicable Statutory Limit from $2,000,000 to $5,000,000 and further authorizes SBA to guarantee bonds on Federal Contracts in excess of $5,000,000 (up to $10,000,000) if a Federal contracting officer certifies the need for the guarantee; but SBA's authority to guarantee bonds on any Contract in excess of $2,000,000 is scheduled to expire on September 30, 2010. Restrictions on bond guarantees for Contracts in excess of $2,000,000 are

described below under the revisions to section 115.12(e) (3).

In addition, a new definition, ''Order'' has been added to § 115.10 in order to make it clear that SBA is authorized to guarantee bonds on indefinite delivery Contracts (definite quantity, indefinite quantity, or requirement Contracts), and that task orders or delivery orders issued under such Contracts will be subject to the same rules as all other Contracts, except where otherwise stated. This term is also added to the present definition of ''Contract.''

Section 115.12(b) is revised to remove the reference to the address of Surety Association of America, which is no longer current. Removal will make it unnecessary to revise the regulation each time the Association moves.

Section 115.12(e) is revised to include the new defined term ''Order'' and to address issues involving the determination of the amount of the Contract. In particular, section 115.12(e)(1) now clarifies how to determine the Contract amount for fixed price, requirements, and indefinite quantity Contracts. For fixed price contracts, the amount of the contract is the price excluding any options. The amount of the contract, for requirements contracts, is the price of the total estimated quantity to be ordered. For an indefinite quantity Contract, the amount of the Contract is the price of the specified minimum quantity to be ordered and, separately, for each Order under the indefinite quantity Contract, the price of the Order.

Section 115.12(e)(2) addresses the question of when construction Contracts and/or Orders for supplies and services should be aggregated for purposes of determining whether the Principal's total obligation exceeds the Applicable Statutory Limit.

Regardless of the penal sum of the bond in question, SBA has no authority to guarantee bonds on any Contract that exceeds the Applicable Statutory Limit at the time of bond execution. For the purpose of determining whether SBA's guarantee of a particular bond would exceed its authority, ''Contract'' means in this context the Principal's total duty to the Obligee in connection with a single project, regardless of the number of formally separate contracts, bonded or not, that set forth the respective obligations of the Principal and Obligee. Section 115.12(e)(2) addresses this question.

Section 115.12(e)(2)(i) restates SBA's long-standing rule with respect to construction Contracts in which substantially all the elements of the respective obligations of the Principal and Obligee—the project—are known and set forth in considerable detail before the bonds are executed. If the stated compensation due the Principal does not then exceed the Applicable Statutory Limit, subsequent modifications that increase the Contract price will not, as such, invalidate SBA's guarantee obligation; even modifications that take the bonded Contract's price over the Applicable Statutory Limit will do no more than reduce SBA's guarantee percentage. However, if for any reason the Principal and Obligee choose before the bond is executed to set forth their respective total obligation in two or more separate documents, SBA must determine whether they are truly separate Contracts or parts of the same project. Section 115.12(e)(2)(i) sets forth the standards governing this determination.

In the case of service or supply Contracts and/or Orders, two or more separate Contracts or Orders will be aggregated only if it is determined, following SBA discussion with the contracting official awarding the Contracts or Orders, that a single Contract or Order could reasonably have satisfied the Obligee's requirement. Such discussion with the contracting official might be prompted by the simultaneous award of two or more Contracts or Orders for the same services or supplies to the same Principal, multiple awards for the same services or supplies to the same Principal within a very short timeframe, or a pattern of such awards to the same Principal over an extended period.

Section 115.12(e)(3) is revised to delete the current text because the relationship between separate Orders under an indefinite (multi-year) Contract and the Applicable Statutory Limit is now addressed in section 115.12(e)(2) and because the relationship between the Contract or Order Amount and the penal sum of the bond is addressed in § 115.19(a).

SBA has added a new paragraph (3), Contracts or Orders in excess of $2,000,000, that implements the restrictions on the use of Recovery Act funds under Section 1604 of the Recovery Act, Public Law 111–5, February 17, 2009. Section 1604 provides that none of the funds appropriated or otherwise made available under the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. Guidance issued by the Office of Management and Budget provides that ''[i]n exercising their available discretion to commit, obligate or expend funds under the Recovery Act for grants and other forms of Federal financial assistance, executive departments and agencies, to the extent permitted by law, shall not approve or otherwise support funding for projects that are similar to those described in section 1604 of Division A of the Recovery Act.'' (Memorandum for the Heads of Executive Departments and Agencies, March 20, 2009, p. 2. available at *http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/*) Accordingly, SBA bond guarantees that are funded with Recovery Act funds (*i.e.,* bond guarantees for Contracts greater than $2 million) may not be extended if the Obligee is an entity primarily engaged in these activities or the work required by the Contract is part of a project for the construction, renovation, or improvement of any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

SBA also has added a new paragraph (4), Federal Contracts or Orders in excess of $5,000,000, that establishes the process for guarantees of bonds on such Contracts.

SBA has revised section 115.19 to reflect the Recovery Act's temporary provisions regarding SBA's authority to deny liability under its guarantee. The introductory language to section 115.19 is revised to include SBA's temporarily-granted discretion to deny liability in part. Under prior law, SBA had no discretion to accept partial liability. SBA was completely discharged from all liability in the event of certain circumstances set forth in the Small Business Act, the regulations or in the general law of contracts and suretyship, regardless of the circumstances of any particular case. In the case of a bond guaranteed by SBA between February 17, 2009 and September 30, 2010, inclusive, SBA has discretion to accept liability in part under circumstances that would previously discharge SBA completely.

Part 121 is revised at section 121.301(d) to incorporate the Recovery Act provision specifying, for the period starting February 17, 2009 and ending on September 30, 2010, that a concern is small only if it, together with its affiliates, meets the size standard corresponding to the NAICS code for the primary industry in which such business concern together with its affiliates is engaged. Section 508 of the Recovery Act amended Section 410 of the Small Business Investment Act by adding a new, but temporary, size standard for this program, prefaced by the words ''Notwithstanding any other provision of law or any rule, regulation,

or order of the Administration * * *.'' Accordingly, subparagraphs (d)(1), (2) and (3) are temporarily superseded.

III. Justification for Publication as Interim Final Rule.

In general, before issuing a final rule, SBA publishes the rule for public comment in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides an exception from the general rule where the agency finds good cause to omit public participation. 5 U.S.C. 553(c)(3)(B). The good cause requirement is satisfied when prior public participation can be shown to be impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without first soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. The current turmoil in the financial markets is having a negative effect on the availability of financing for small business, including diminished access to the commercial surety bond market. The bonding capacity of surety companies is substantially reduced, making them more risk-averse; and small concerns that were formerly acceptable risks are now seen as questionable. To enable these small concerns to continue to obtain the bonding they formerly obtained in the commercial market Congress has temporarily expanded the surety bond guarantee program. The beneficial effects of this expansion on these small concerns and on the sureties that will bond them are obvious. Less obviously, but no less significantly, the parties that will contract with them for goods and services will benefit because they will be obtaining these goods and services at the lowest price.

SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to help small businesses sustain and survive during this economic downturn. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest.

Although this rule is being published as an interim final rule, comments are solicited from interested members of the public. These comments must be submitted on or before August 21, 2009. SBA will consider these comments and the need for making any amendments as a result of these comments.

IV. Justification for Immediate Effective Date

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. The provisions of this rule relating to SBA's authority to guarantee bonds on Contracts in excess of $2,000,000, its authority to accept partial liability on its guarantee, and its authority to deny liability when a Prior Approval Surety's applications has set forth the material facts upon which a denial would be based, will expire on September 30, 2010. The statutory authority for the size standard this rule establishes will also expire on September 30, 2010. These provisions do not require any adjustment to the public's behavior; moreover, delaying implementation of the rule could have serious impact on the nation's small businesses

Compliance with Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action for purposes of Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive effect and is retroactive only to the extent that certain of the changes required by the Recovery Act will apply to bond guarantees issued on or after February 17, 2009—before the effective date of this interim final rule.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various layers of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

SBA has determined that this rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35, which require amendment to an existing information collection, Surety Bond Guarantee Assistance, OMB Control #3245–0007. This information collection is currently used to gather information necessary for processing applications for bond guarantees and requests for claim reimbursement. As a result of the Recovery Act changes to the SBG program, this information collection will be modified to collect additional information that will enable SBA to determine whether Recovery Act funds can be used for cost of bond guarantees, and also to track the use of those funds to meet reporting requirements under the Recovery Act. The information collection currently consists of 6 forms. These forms are available in paper and electronic formats. SBA will modify 3 of these forms and add a new form to the collection:

(1) Form 990, Surety Bond Guarantee Agreement and Form will be modified to add language to the certification portion of the form. This language is intended to ensure that the bond guarantee is not approved for a small business that is performing work for an obligee or on a contract that is related to the restricted uses of funds included in the Recovery Act, including casinos or other gambling establishments, aquariums, zoos, golf courses, or swimming pools.

(2) On Form 994, Application for Surety Bond Guarantee Assistance, the small business's DUNS number is now being collected in Part I (Business Information) to provide data necessary for Federal Funding Accountability and Transparency Act reporting; the contract NAICS code, number of employees and number of jobs created and retained is being added to Part III (Contract Information) to provide statistical data that would enable SBA to report clearly on Recovery Act bonds versus non Recovery Act bonds; and language in Parts II (Principal Information) and V (Applicant's Certification) is being modified for clarification purposes.

(3) Form 994H, Default Report, Claim Reimbursement and Record of Administrative Action, is also being modified to add a certification regarding the Surety's compliance with SBG

program regulations and other requirements, including the Recovery Act requirements.

(4) A new form, 994R, Application for Surety Bond Guarantee—Under the Recovery and Reinvestment Act—is also being added to the collection. This form is essentially a rider to Form 994, and will be completed only if the bond is related to the Recovery Act, determined if the original contract amount is over $2 million. The additional information collected on this rider is needed to fulfill reporting requirements on the outcomes and metrics related to the Recovery Act. The information that will be collected on this rider includes a disclosure about contract amounts in excess of $5 million, and whether certification has been obtained from the applicable Contracting Officer regarding such contract amounts. The rider also requires the small business applicant to assert whether contract involves construction, renovation, or operation of a casino or other gambling establishment, golf course, zoo, aquarium or swimming pool.

SBA has submitted this information collection to the Office of Management and Budget (OMB) for review and approval under the emergency processing procedures in 5 CFR 1320.13. If OMB approves the request for emergency approval, SBA will submit this information collection for standard review following the emergency approval period. Any comments received as a result of this publication will be addressed at that time.

The title, description and number of respondents, estimated annual cost and hour burdens imposed on the respondents as a result of this collection of information are outlined below. SBA invites comments on: (1) Whether the changes to the described collection of information are necessary for the proper performance of SBA's operation of the Surety Bond program, including whether the information will have practical utility; (2) the accuracy of SBA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for this interim final rule to SBA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503, and to Barbara J. Brannan, Office of Surety Guarantees, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Title: Surety Bond Guarantee Assistance.

OMB Control Number: 3245–0007.

Form Numbers—SBA Forms, 990, 991, 994, 994B, 994F and 994H, [Current] and Form 994R [New].

Description of Respondents: (i) The small business contractor completes Forms 991, 994, 994F, and 994—Rider; (ii) The Surety Agent completes Forms 990, 994B, and 994H.

Total Estimated Number of Respondents for all forms: 1,050: (Small businesses—700; Surety Agents—350).

Frequency of Responses: On occasion—per application for guarantee on surety bond, or for claim reimbursement.

Total Estimated Number of Responses for all forms: 17,965. This estimate reflects an increase of 49 bonds using Recovery Act funds (*i.e.,* bonds for Contracts or Orders in excess of $2M and up to $10M).

Total Estimated Hour Burden: 2,001. This total reflects an estimated increase of 42 hours due to the changes pursuant to the Recovery Act.

Regulatory Flexibility Act

Because this rule is an interim final rule, there is no requirement for SBA to prepare a Regulatory Flexibility Act (RFA) analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare analysis that describes whether the impact of the rule will have a significant impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required.

List of Subjects

13 CFR Part 115

Claims, Guarantee authority, Surety bond guarantees.

13 CFR Part 121

Size eligibility provisions and standards.

■ For the reasons stated in the preamble, SBA amends 13 CFR parts 115 and 121 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for 13 CFR part 115 is revised to read as follows:

Authority: 5 U.S.C. app. 3, 15 U.S.C. 687b, 687c, 694a, 694b, 694b note, Pub. L. 106–554; and Pub. L. 108–447, Div. K, Sec. 203.

■ 2. Amend § 115.10 as follows:

■ (a) Revise the first sentence of the definition of the word ''Contract''; and

■ (b) Add new definitions of ''Applicable Statutory Limit'' and ''Order'' in alphabetical order.

§ 115.10 Definitions.

* * * * *

Applicable Statutory Limit means the maximum amount of any Contract, or Order, for which Section 411(a) of the Small Business Investment Act, as amended from time to time, authorizes the SBA to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond. The Applicable Statutory Limit from February 17, 2009 through September 30, 2010, is $5,000,000; provided, however, that during this period the Applicable Statutory Limit is $10,000,000 for a particular Contract or Order if a contracting officer of a Federal agency certifies in writing that a guarantee in excess of $5,000,000 is necessary.

* * * * *

Contract means a written obligation of the Principal, including an Order, requiring the furnishing of services, supplies, labor, materials, machinery, equipment, or construction. * * *

* * * * *

Order means a task order for services or delivery order for supplies issued under an indefinite delivery Contract (definite quantity, indefinite quantity, or requirements).

* * * * *

■ 3. Amend § 115.12 by revising paragraphs (b) and (e), to read as follows:

§ 115.12 General program policies and provisions.

* * * * *

(b) *Eligibility of bonds.* Bid Bonds and Final Bonds are eligible for an SBA guarantee if they are executed in connection with an eligible Contract, as defined in § 115.10, Definitions, and are of a type listed in the ''Contract Bonds'' section of the most recent Manual of Rules, Procedures, Classifications of the Surety Association of America. Ancillary Bonds may also be eligible for SBA's guarantee. A performance bond must not prohibit a Surety from performing the Contract upon default of the Principal.

* * * * *

(e) *Amount of Contract*—(1) *Determination of Amount of Contract.* For a fixed price Contract, the amount

of the Contract is the price excluding any options. For a requirements Contract, the amount of the Contract is the price of the total estimated quantity to be ordered under the Contract. For an indefinite quantity Contract, the amount of the Contract is the price of the specified minimum quantity to be ordered under the Contract and, for each Order issued under such Contract, the price of each such Order. The amount of the Contract or Order to be bonded must not exceed the Applicable Statutory Limit as of the date:

(i) SBA approves a Prior Approval Surety's request for a Bid Bond guarantee;

(ii) A Preferred Surety Executes a Bid Bond; or

(iii) The date Final Bonds (and any Ancillary Bonds) unrelated to an SBA-guaranteed Bid Bond are Executed by a Preferred Surety or by a Prior Approval Surety following SBA's approval of its request for a guarantee of Final Bonds.

(2) *Aggregation of Contract and Order amounts.* (i) The amounts of two or more formally separate Contracts for a single construction project are aggregated to determine the Contract amount unless the Contracts are to be performed in phases and the prior bond is released before the beginning of each succeeding phase. A bond may be considered released even if the warranty period it is covering has not yet expired. For purposes of this paragraph, a ''single construction project'' means one represented by two or more Contracts of one Principal or its Affiliates with one Obligee or its Affiliates for performance at the same location, regardless of job title or nature of the work to be performed.

(ii) The amounts of two or more Contracts or Orders for supplies and services awarded to the same Principal or its Affiliates are aggregated to determine the Contract or Order amount if SBA determines, after discussion with the contracting official responsible for the award of the contract, that award of a single Contract or Order could reasonably have satisfied the supply or service requirement at the time of issuance.

(3) *Contracts or Orders in excess of $2,000,000.* SBA is not authorized to guarantee bonds on Contracts or Orders in excess of $2,000,000 if the statement of work involves, directly or indirectly, construction, operation, renovation or improvement of a casino or other gambling establishment, aquarium, zoo, golf course or swimming pool, or the Contract Obligee has one of the following NAICS codes:

(i) 713210—''Casinos (Except Casino Hotels)'';

(ii) 721120—''Casino Hotels'';

(iii) 713290—''Other Gambling Industries'';

(iv) 713910—''Golf Courses and Country Clubs'';

(v) 712130—''Zoos and Botanical Gardens''; or

(vi) 713940—''Fitness and Recreational Sports Centers'' if SBA determines the business is a swimming pool.

(4) *Federal Contracts or Orders in excess of $5,000,000.* Through September 30, 2010, SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than $5,000,000, and up to $10,000,000, upon a signed certification of a Federal contracting officer. The contracting officer's certification must include a statement that the small business is experiencing difficulty obtaining a bond and that an SBA bond guarantee would be in the best interests of the Government. The certification must be express mailed to SBA, Office of Surety Guarantees, 409 Third Street, SW., Suite 8600, Washington, DC 20416, or faxed to the Office of Surety Guarantees at 202–481–0390, with a copy provided to the small business, and must include the following additional information:

(i) Name, address and telephone number of the small business;

(ii) Offer or Contract number and brief description of the contract; and

(iii) Estimated Contract value and date of anticipated award determination.

* * * * *

■ 4. Amend § 115.19 by revising the introductory text and paragraph (a) to read as follows:

§ 115.19 Denial of liability.

Except for bonds executed on or after February 17, 2009 and before October 1, 2010, in addition to equitable and legal defenses and remedies under contract law, the Act, and the regulations in this part, SBA is relieved of liability if any of the circumstances in paragraphs (a) through (h) of this section exist. For bonds executed on or after February 17, 2009 and before October 1, 2010, SBA is relieved of liability in whole or in part within its discretion under those circumstances, except that SBA shall not deny liability on Prior Approval bonds executed during such timeframe based solely upon material information that was provided as part of the guarantee application.

(a) *Excess Contract or bond amount.* The total Contract or Order amount at the time of Execution of the bond exceeds the Applicable Statutory Limit (see § 115.10) or the bond amount at any time exceeds the total Contract or Order amount.

* * * * *

■ 5. Amend § 115.31 by revising the heading and first sentence of paragraph (d), and revising paragraph (e), to read as follows:

§ 115.31 Guarantee percentage.

* * * * *

(d) *Contract or Order increases exceed Applicable Statutory Limit.* If the Contract or Order amount is increased above the Applicable Statutory Limit after Execution of the bond, SBA's share of the Loss is limited to that percentage of the increased Contract or Order amount that the Applicable Statutory Limit represents multiplied by the guarantee percentage approved by SBA.

* * *

(e) *Contract or Order decrease to $100,000 or less.* If the Contract or Order amount decreases to $100,000, or less, after Execution of the bond, SBA's guarantee percentage increases to 90% if the Surety provides SBA with evidence supporting the decrease and any other information or documents requested.

■ 6. Section 115.68 is revised to read as follows:

§ 115.68 Guarantee percentage.

SBA reimburses a PSB Surety in an amount not to exceed 70% of the Loss incurred and paid. Where the total Contract or Order amount increases beyond the Applicable Statutory Limit after Execution of the bond, SBA's share of the Loss is limited to that percentage of the increased Contract or Order amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For an example, see § 115.31(d).

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR Part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 662(5) and 694a; and Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

■ 2. Amend § 121.301 by adding a new paragraph (d)(4) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

* * * * *

(4) Notwithstanding paragraphs (d)(1), (2) and (3) of this section, from February 17, 2009 through September 30, 2010, a concern is small only if it is a business concern that, combined with its affiliates, does not exceed the size standard designated for the primary

industry of the business concern combined with its affiliates.

* * * * *

Dated: July 16, 2009.

Karen Gordon Mills,

Administrator.

[FR Doc. E9–17323 Filed 7–17–09; 11:15 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

[Docket No. FDA–2009–N–0270]

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of two new animal drug applications (NADAs) and an abbreviated new animal drug application (ANADA). In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADAs and ANADA.

DATES: This rule is effective August 3, 2009.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, e-mail: *john.bartkowiak@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the two NADAs and ANADA listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1.

Sponsor	NADA/ANADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Wellmark International, 1501 East Woodfield Rd., suite 200, West Schaumburg, IL 60173	NADA 141–162 Zodiac Fleatrol Flea Caps (S-methoprene)	520.1390 (011536)
IDEXX Pharmaceuticals, Inc., 7009 Albert Pick Rd., Greensboro, NC 27409	NADA 141–178 NAVIGATOR Paste (nitazoxanide)	520.1498 (065274)
Abbott Laboratories, North Chicago, IL 60064	ANADA 200–279 KETAFLO Injection (ketamine HCl, USP)	522.1222a (000074)

In a notice published elsewhere in this issue of the Federal Register, FDA gave notice that approval of NADAs 141–162 and 141–178, and ANADA 200–279, and all supplements and amendments thereto, are withdrawn, effective August 3, 2009. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect the withdrawal of approval.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 520 and 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1390 [Removed]

■ 2. Remove § 520.1390.

§ 520.1498 [Removed]

■ 3. Remove § 520.1498.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 4. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1222a [Amended]

■ 5. In paragraph (b) of § 522.1222a, remove ''000074,''.

Dated: July 14, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–17409 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 524

[Docket No. FDA–2009–N–0665]

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADAs) and one abbreviated new animal drug application (ANADA) from Virbac AH, Inc., to Cross Vetpharm Group Ltd.

DATES: This rule is effective July 22, 2009.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Virbac AH, Inc., 3200 Meacham Blvd., Ft.

Worth, TX 76137, has informed FDA that it has transferred ownership of, and all rights and interest in, the following three approved NADAs and one approved ANADA to Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland:

Application No. (NADA/ANADA)	21 CFR Section	Product Name
007–076	520.2325a	Sulfa-Nox (sulfaquinoxaline) Liquid
008–244	520.2325a	Sulfa-Nox (sulfaquinoxaline) Concentrate
049–729	520.2261a	PURINA Sulfa (sulfamethazine)
200–318	524.1193	VIRBAMEC (ivermectin) Pour-On

Accordingly, the agency is amending the regulations in 21 CFR 520.2261a, 520.2325a, and 524.1193 to reflect the transfer of ownership.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 520 and 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 524 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.2261a [Amended]

■ 2. In paragraph (a) of § 520.2261a, remove ''051311 and 053501'' and in its place add ''053501 and 061623''.

§ 520.2325a [Amended]

■ 3. In paragraph (a)(2) of § 520.2325a, remove ''051311'' and in its place add ''061623''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 4. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1193 [Amended]

■ 5. In paragraph (b) of § 524.1193 remove ''051311'' and in numerical sequence add ''061623''.

Dated: July 14, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–17356 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 6676]

Foreign Officials: Definition of Immediate Family Members, as Amended

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: As authorized the Immigration and Nationality Act this rule amends the definition of ''immediate family'' for the Foreign Government Official nonimmigrant visa category.

DATES: *Effective Date:* This rule is effective July 22, 2009.

FOR FURTHER INFORMATION CONTACT: Lauren A. Prosnik, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street, NW., Room L–603D, Washington, DC 20520–0106, (202) 663–1202, e-mail (*ProsnikLA@state.gov*).

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

The Secretary of State has the authority and responsibility for the execution of the foreign policy of the United States. In the exercise of this authority and responsibility, this rule amends the definition of ''immediate family'' for the Foreign Government Official category of nonimmigrants as authorized by section 101(a)(15)(A) of the Immigration and Nationality Act [8 U.S.C 1101]. The term ''immediate family'' previously required that immediate family members other than the spouse and unmarried sons and daughters be related to the principal or spouse by blood, marriage or adoption. The definition now includes, upon authorization from the Department on a case by case basis, any other alien who is not a member of some other household; will reside regularly in the household of the principal alien; and is recognized as a family member of the principal alien by the sending Government as demonstrated by eligibility for rights and benefits from that Government, such as the issuance of a diplomatic or official passport or travel or other allowances. This will allow the Department greater flexibility in responding to requests by foreign governments to issue a diplomatic visa to a person who regularly resides with and is a member of the household of a qualified principal alien and is considered by the principal alien and the sending Government to be a member of the immediate family of the principal alien.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulation does not affect any small entities, as defined in 5 U.S.C. 601(6).

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State has reviewed this regulation to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the regulation justify its costs. The Department does not consider the regulation to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the legislation in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and visas.

■ For the reasons set forth in the preamble, the Department of State amends 22 CFR part 41 as follows:

PART 41—[AMENDED]

■ 1. Revise paragraph (a)(3) of § 41.21 is to read as follows:

§ 41.21 Foreign Officials—General.

(a) * * *

(3) *Immediate family,* as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), and in classification under the NATO–1 through NATO–5 visa symbols, means the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. Under the INA 101(a)(15)(A) and 101(a)(15)(G) visa classifications, ''immediate family'' also includes individuals who:

(i) Are not members of some other household;

(ii) Will reside regularly in the household of the principal alien;

(iii) Are recognized as immediate family members of the principal alien by the sending Government as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport, or travel or other allowances; and

(iv) Are individually authorized by the Department.

* * * * *

Dated: July 14, 2009.

Michael D. Kirby,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E9–17262 Filed 7–21–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–115–FOR; OSM–2009–0006]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Interim rule with request for comments.

SUMMARY: We are approving, on an interim basis, an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised its Surface Coal Mining and Reclamation Act to effect changes concerning its alternative bonding system. The tax provisions of the amendment are intended to increase and extend the special reclamation tax, subject to biennial review by the legislature, and remove the additional tax. We are approving the increase and extension of the special reclamation tax, at the rate of fourteen and four-tenths cents per ton of clean coal mined, for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund, on an interim basis, with our approval becoming effective upon publication of this interim rule.

DATES: *Effective Date:* This rule is effective July 22, 2009. *Comment Date:* We will accept written comments until 4 p.m., local time August 21, 2009. If requested, we will hold a public hearing on August 17, 2009. We will accept requests to speak until 4 p.m., local time on August 6, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID: OSM–2009–0006. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2009–0006 and click the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2009–0006, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Please include the rule identifier (WV–115–FOR) with your written comments.

Instructions: All submissions received must include the agency Docket ID (OSM–2009–0006) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see ''IV. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: The interim rule and any comments that are submitted may be viewed over the internet at *http://www.regulations.gov.* Look for Docket ID OSM–2009–0006. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE., Charleston, WV 25304, Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description and Submission of the Amendment
III. OSM's Findings
IV. Public Comment Procedures
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description and Submission of the Amendment

By letter dated May 22, 2009, and received on May 28, 2009 (Administrative Record Number WV–1518), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) as contained in Enrolled Committee Substitute for Senate Bill 600 concerning the State's alternative bonding system.

Committee Substitute for Senate Bill 600 amended Section 22–3–11 of the WVSCMRA. As stated in the State's May 22, 2009, letter transmitting the amendment, Committee Substitute for Senate Bill 600 ''amends Chapter 22–3–11 of the Code of West Virginia to implement actuarial recommendations relating to the continuing fiscal viability of the Special Reclamation Fund. The legislation consolidates what has been known as ''the 7-and-7.4 tax'' (the 7.4 [cents] portion of which is currently subject to annual renewal) into a 14.4 cent[s] tax per ton of clean coal mined, reviewable every two years by the Legislature''.

Subsection 22–3–11(h)(1) of the WVSCMRA is amended by deleting the year 2008, and adding language to provide that, ''For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax * * *''

Former subparagraph (A) is revised by deleting language which provides that the special reclamation tax be remitted for the initial period of twelve months, ending June 30, 2009, and the word ''seven'' is deleted. As modified, the special reclamation tax is increased from seven and four-tenths to fourteen and four-tenths cents per ton of clean coal mined.

Former subparagraph (B) is amended by deleting language which provides that ''[A]n additional seven cents per ton of clean coal mined, the proceeds of which shall be deposited in the Special Reclamation Fund.'' This revision eliminates the additional seven cents tax which previously funded the Special Reclamation Fund.

Furthermore, language is deleted which provides that the additional seven cents tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon the recommendation of the council pursuant to the provisions of section seventeen, article one of this chapter. This provision is modified to provide that, ''Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued:''

Specifically, the amended language relating to the special reclamation tax now reads as follows:

> Chapter 22–3–11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.
>
> (h)(1) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply. Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued: *Provided,* That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

III. OSM's Findings

Effective upon publication of this interim rule, we are approving, on an interim basis, the revisions to Subsection 22–3–11(h)(1) of the WVSCMRA, which increase and extend the special reclamation tax and remove the additional tax. Since these revisions continue revenues into the State's alternative bonding system at the same rate as previously approved, we find that they do not render the West Virginia program less effective than the Federal regulations at 30 CFR 800.11(e). Because our approval of these revisions

is interim, and in order to satisfy the public participation requirements for approval or disapproval of State program amendments, we will accept comments on the increase and extension of the special reclamation tax in accordance with Section IV of this **Federal Register** notice. Following our review of the comments received, we will issue a final rule announcing the Director's final decision on the revisions to Subsection 22–3–11(h)(1) of the WVSCMRA that are the subject of this interim rule.

Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(3)(B), we find that good cause exists to approve the revisions to Subsection 22–3–11(h)(1) of the WVSCMRA on an interim basis without notice and opportunity for comment, because to require notice and opportunity for comment now would be contrary to the public interest in that the special reclamation tax is due to expire on June 30, 2009, and it would delay the start of the collection of the increased special reclamation tax. Enrolled Committee Substitute for Senate Bill 600 becomes effective under State law on July 1, 2009, and the public interest in the accomplishment of prompt and thorough reclamation of bond forfeiture sites, including water treatment of discharges therefrom, will be adversely affected if the 14.4 cents per ton special reclamation tax cannot be collected on and after that effective date. In any event, as explained above, the public will have an opportunity to comment on the reinstatement and extension of the special reclamation tax, before we make a final decision on the proposed changes.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments: Send your written comments to OSM at one of the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (Eastern time), on August 6, 2009. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting: If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Docket for this rulemaking.

V. OSM's Decision

Based on the above findings, we are approving on an interim basis, the specific revisions outlined above to the West Virginia program as provided to us on May 28, 2009. To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this interim rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on an analysis of the State submission.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with''

regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally-recognized Indian tribes and have determined that the rule does 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State has a special reclamation tax of $0.074 per ton of clean coal mined which is due to expire on June 30, 2009. The tax is used to reclaim bond forfeiture sites in the State. On May 4, 2009, the Governor signed into law a bill that will reinstate and increase the special reclamation tax to $0.144 per ton of clean coal mined. The additional $0.07 tax is being removed, and the previous one-year expiration period for the special reclamation tax is being deleted. Under the amended language, the Legislature will review the special reclamation tax every two years to determine whether the tax should be continued. The tax is payable by all operators mining coal in West Virginia, regardless of size. The tax, which is an important source of revenue for the State's alternative bonding system, is used to supplement reclamation bond amounts in the event of forfeiture.

Small Business Regulatory Enforcement Fairness Act

Based upon the above analysis and discussion, we have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 15, 2009.

Thomas D. Shope,

Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
*	*	* * * * *
May 28, 2009	July 22, 2009	W. Va. Code 22–3–11(h)(1) (interim approval).

[FR Doc. E9–16796 Filed 7–21–09; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 111

Express Mail Refunds for Shipments of Live Animals

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising its standards for postage refunds for Express Mail® shipments of live animals in an effort to maintain the economic viability of shipping animals via Express Mail service.

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

FOR FURTHER INFORMATION CONTACT: Joel Rosen, 202–268–4329 or Monica Grein, 202–268–8411.

SUPPLEMENTARY INFORMATION: On April 14, 2009, the Postal Service published a proposed rule in the **Federal Register** (74 FR 17128–17129) inviting comments on a revision to change the postage refund standards for Express Mail shipments of live animals delivered or attempted to be delivered within 3 days

of the date of mailing. After reviewing the comments, and upon further consideration of the proposed revisions, the Postal Service has decided to adopt the proposed regulations with minor revisions.

As noted in the Supplementary Information section of the proposed rule, the Postal Service is revising the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to change the postage refund standards for Express Mail shipments of live animals delivered or attempted to be delivered within 3 days of the date of mailing. In some instances, the Postal Service must reroute Express Mail shipments of live animals to alternative flights or routes in order to protect the well-being of live animals. This is particularly necessary if other shipments on the same flight contain dry ice or solid carbon dioxide, which will evaporate en route and may displace oxygen. If live animals were shipped in the same cargo hold, the carbon dioxide could cause asphyxiation. The use of alternative flights and rerouting to protect the well-being of the live animals can delay shipments. Therefore, even though the live animals arrive as promptly as possible and alive, these shipments may not meet the scheduled delivery date. In those instances, some mailers then apply for full postage refunds.

Currently, postage refunds for Express Mail shipments of live animals are granted based on the next-day or second-day delivery date scheduled at the time of mailing. This current postage refund policy does not account for the flight changes that may occur to protect the well-being of the animals. Therefore, under this final rule, postage refunds will not be available for Express Mail shipments of live animals delivered or attempted to be delivered within 3 days from the date of mailing. Postage refund requests for Express Mail shipments of live animals delivered after 3 days from the date of mailing may be granted.

Evaluation of Comments Received

The Postal Service received three sets of comments. One commenter suggested we stop shipping animals altogether. The Postal Service has determined that this suggestion is outside the scope of this final rule.

One commenter suggested we add the proposed language for 601.9.3.4 to all the subsections under 601.9.3. The Postal Service added the proposed language only to the adult fowl section because this is the only type of animal for which Express Mail shipment is required. To be consistent, the Postal Service has decided to remove the proposed language from the adult fowl section and address the refund policy in the Postage Refund section only.

The commenter also suggested that DMM section 601.9.3.2 is inconsistent with the proposed rules in that the proposal allows for an extended arrival time. The Postal Service believes that this suggestion does not recognize the limited purpose of this final rule. While the new rule extends the arrival time of Express Mail shipments of live animals before refunds may be granted, the acceptance time conditions as indicated in 601.9.3 remain unchanged. At the time of acceptance, the Postal Service cannot predict whether the shipment will be delayed due to procedures taken to preserve the life of the contents. Therefore, the dispatch, transportation, and delivery processes must continue to be governed by the estimated service standard provided at the time of mailing.

Two commenters expressed concern regarding purposeful delays of live animal shipments. The Postal Service is not changing the way we handle live animals and is not making any operational changes. Our first priority is to keep live animals alive, and we will continue to provide the most expeditious handling that meets that priority.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

100 Retail Mail Letters, Cards, Flats, and Parcels

* * * * *

110 Retail Mail Express Mail

* * * * *

114 Postage Payment Methods

* * * * *

3.0 Postage Refunds

3.1 Postage Not Refunded

[Revise the introductory paragraph of 3.1 to read as follows:]

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

[Revise the first sentence of item a, and add a new item c as follows:]

a. If the item was properly detained for law enforcement purpose; strike or work stoppage; delayed because of an incorrect ZIP Code or address; forwarding or return service was provided after the item was made available for claim; delay or cancellation of flights. * * *

* * * * *

c. The shipment contained live animals and was delivered or delivery was attempted within three days of the date of mailing as shown in the ''Date In'' box on Label 11.

* * * * *

400 Commercial Mail Parcels

* * * * *

410 Commercial Parcels Express Mail

* * * * *

414 Postage Payment and Documentation

* * * * *

3.0 Postage Refunds

[Revise the introductory paragraph of 3.0 to read as follows:]

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

[Revise the first sentence of item a and add a new item c as follows:]

a. If the item was properly detained for law enforcement purpose; strike or work stoppage; delayed because of an incorrect ZIP Code or address; forwarding or return service was provided after the item was made available for claim; delay or cancellation of flights. * * *

* * * * *

c. The shipment contained live animals and was delivered or delivery was attempted within three days of the date of mailing as shown in the ''Date In'' box on Label 11.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

* * * * *

9.0 Refunds and Exchanges

* * * * *

9.2 Postage and Fee Refunds

* * * * *

9.2.4 Full Refund

A full refund (100%) may be made when:

* * * * *

[Revise item l to read as follows:]

l. Express Mail is not delivered according to the applicable service standard, except as provided in 114.3.1 and 414.3.0. * * *

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–17124 Filed 7–21–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[HI–126–NBK; FRL–8916–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Hawaii; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

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

DATES: *Effective Date:* This action is effective July 22, 2009.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations and online at EPA Region IX Web site:

Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460.

Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) *Docket/Telephone number:* (202) 566–1742; or 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.*

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, (415) 947–4120 or by e-mail at *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address the unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On August 4, 2005 (70 FR 44852), as corrected on August 23, 2005 (70 FR 49377), EPA published a document in the **Federal Register** beginning the new IBR procedure for the State of Hawaii. Today's action is an update to the August 4, 2005 document.

II. EPA Action

In this document, EPA is doing the following:

A. Announcing an update to the IBR material as of May 1, 2009; and

B. Revising the entries in paragraphs 52.620(b) and (c) to reflect this update.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Likewise, there is no purpose served by delaying the effective date of this action. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, 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 UMRA.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, ''Protection of Children from

Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action based on health or safety risks.

This rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules is discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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. Today's action simply reformats the codification of provisions which are already in effect as a matter of law. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of [*July 22, 2009*]. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** This update to the Identification of plan for Hawaii is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Hawaii SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' reorganization update action for the State of Hawaii.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 25, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart M—State of Hawaii

■ 2. Section 52.620 is amended by revising paragraphs (b) and (c) to read as follows:

§ 52.620 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approval date prior to May 1, 2009, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register.** Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after May 1, 2009 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region IX certifies that the rules and regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of May 1, 2009.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region IX Office at 75 Hawthorne Street, San Francisco, CA 94105; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC; or 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.*

(c) EPA approved regulations.

EPA-APPROVED STATE OF HAWAII REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
Department of Health, Public Health Regulations, Chapter 43, Air Pollution Control Regulations:				
Section 22	Hearings and Appeals	12/26/1972	05/14/1973, 38 FR 12711	*See* also 74 FR 11037 (March 16, 2009).
Section 23	Application	03/28/1972	05/31/1972, 37 FR 10842	*See* also 74 FR 11037 (March 16, 2009).
Department of Health, Title 11, Chapter 60, Air Pollution Control Regulations:				
11–60–1	Definitions	11/29/1982	08/18/1983, 48 FR 37403.	

EPA-APPROVED STATE OF HAWAII REGULATIONS—Continued

State citation	Title/subject	Effective date	EPA approval date	Explanation
11–60–2	Permit system, applicability	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–3	Permit system, applications	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–4	Permit system, conditions for considering applications.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–5	Permit system, action on applications.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–6	Permit system, performance testing.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–7	Permit system, cancellation of authority to construct.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–8	Permit system, suspension or revocation of permit to operate.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–9	Permit system, transfer of permit to operate.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–10	Permit system, reporting discontinuance or dismantlement.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–11	Permit system, posting of permit to operate.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–12	Permit system, fees	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–13	Permit system, fee schedule for a permit to operate.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–14	Permit system, period of permit.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–15	Sampling, testing, and reporting methods.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–16	Malfunction of equipment reporting.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–17	Prohibition of air pollution	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–18	Control of open burning	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–19	Agricultural burning, permit requirement.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–20	Agricultural burning, applications.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–21	Agricultural burning, ‘‘no burn’’ days.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–22	Agricultural burning, record keeping and monitoring.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–23	Agricultural burning, action on applications.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–24	Visible emissions	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–25	Control of motor vehicles	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–26	Fugitive dust	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–27	Incineration	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–28	Bagasse-burning boilers	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–29	Process industries	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–35	Prevention of air pollution emergency episodes.	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–37	Penalties and remedies	11/29/1982	08/18/1983, 48 FR 37403.	
11–60–38	Severability	11/29/1982	08/18/1983, 48 FR 37403.	

* * * * *

[FR Doc. E9–17261 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 74, No. 139
Wednesday, July 22, 2009

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2411

Availability of Official Information

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Labor Relations Authority (Authority) seeks public comment on a proposed revision to its regulations implementing the Freedom of Information Act, as amended. The proposed regulations contain new provisions to comply with the OPEN Government Act of 2007, as well as changes to satisfy the Electronic Freedom of Information Act Amendments of 1996. The regulations have also been revised to reflect changes required by Executive Order 12600 and Executive Order 13392. In addition, the proposed regulations have been updated to reflect changes in the Authority's policies and procedures. As a result of these proposed amendments, the public will have a clearer understanding of the Authority's policies and procedures implementing the FOIA.

DATES: Comments must be received on or before August 21, 2009.

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

- *E-mail: solmail@flra.gov.*

Include ''FOIA PROPOSED RULEMAKING'' in the subject line of message.

- *Fax:* (202) 343–1007.
- *Mail:* Office of the Solicitor, 1400 K Street, NW., Suite 300, Washington, DC 20424.
- *Hand Delivery Courier:* Same as mailing address.

Instructions: All submissions must include your name, return address and e-mail address, if applicable. Please clearly label submissions as ''FOIA PROPOSED RULEMAKING.'' If you submit comments by e-mail, you will receive an automatic confirmation e-mail from the system indicating that we have received your submission. If, in response to your comments submitted via e-mail, you do not receive a confirmation e-mail within 5 working days, please contact us directly at (202) 218–7999.

FOR FURTHER INFORMATION CONTACT: Rosa M. Koppel, Solicitor, via telephone: (202) 218–7999, or via e-mail: *rkoppel@flra.gov.*

SUPPLEMENTARY INFORMATION: The comprehensive revisions to part 2411 that the Authority proposes include changes to the language and structure of the regulations. Provisions have been revised, added, and/or in some cases, reorganized in order to clarify how the Authority implements the procedural requirements of the FOIA. The proposed revisions are not intended to change any rights under the FOIA.

The proposed regulations are intended to achieve compliance with the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524, and Executive Order 13392, 70 FR 75371–75371 (Dec. 9, 2005). Provisions which relate to implementation of the OPEN Government Act are as follows—(1) § 2411.4(b)(1) (identification of deleted information); (2) § 2411.8(a) (setting forth criteria for when the time period for processing requests begins to run and when that time period may be suspended or tolled); (3) §§ 2411.8(c)(5) and 2411.13(b)(3) (address waiver of fees when time limits for complying with FOIA requests are not met); and (4) § 2411.8(d) (assigns individual tracking numbers to requests requiring more than ten days to process and provides phone number/Web site address to inquire about status).

The OPEN Government Act and EO 13392 establish and set forth duties and responsibilities for the Chief FOIA Officer and the FOIA Public Liaison(s). The provisions of the regulations pertaining to these duties and responsibilities are found at: (1) § 2411.3(a) and (c) (delegation of FOIA-related duties to Chief FOIA Officer and designation of FOIA Public Liaison(s)); (2) § 2411.4(b)(1) (identification of deleted information); (3) §§ 2411.8(c)(5) and 2411.13(b)(3) (waives certain processing fees when time limits are not met for processing FOIA requests); (4) § 2411.11(a) (to aid in meeting time limits the FOIA Public Liaison(s) are given responsibility to resolve disputes between requesters and the agency as to the scope of requests or modification of time limits); and (5) § 2411.13(a)(8) (adds definition of ''representative of the news media'').

The proposed regulations would also add new provisions to explicitly implement Executive Order 12600, 52 FR 23781 (June 23, 1987), 3 CFR 235 (1987 Comp.) and the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, 110 Stat. 3048 (E–FOIA). The Authority has been operating in compliance with these provisions of law, and based on its experience is now proposing to update the regulations to reflect this compliance. A new section implementing Executive Order 12600's procedural structure for notifying those who submit business information to the government when that information becomes the subject of a FOIA request can be found at § 2411.9. New provisions implementing the E–FOIA can be found at: (1) § 2411.2(a) (includes electronic formats within the meaning of the term ''record''); (2) § 2411.4(a)(iv) (requires that records that ''have become or are likely to become the subject of subsequent requests for substantially the same records'' be included in FOIA reading room); (3) § 2411.4(a)(v) (requires general index of records be included in FOIA reading room); (4) § 2411.4(b)(2) (establishment of electronic reading room); (5) § 2411.7 (format of disclosure); (6) § 2411.13(a)(2) (searches for records in electronic form or format); and (7) § 2411.15 (modification of deadline for submission of Annual Report and requirement that it shall be available in electronic format).

Further, the proposed revisions are intended as a routine updating of the Authority's procedures—to streamline the existing procedures based on experience, to reflect certain changes in the procedural requirements of the FOIA since the current regulations issued, and to make the Authority's procedures easier for the public to understand. Provisions that implement these goals can be found at: (1) § 2411.2 (adds a new section clarifying that the regulations' scope includes information in electronic formats and the relation of the regulations to the Privacy Act regulations in part 2412); (2) § 2411.4(a) and (b) (merging paragraph (b) of § 2411.4 into paragraph (a) of § 2411.4 so that the policies of all three FLRA components are addressed in one

paragraph); (3) § 2411.4(d) (eliminating explanatory discussion of specific FOIA exemptions from mandatory disclosures); (4) § 2411.4(f)(1) and (2) (providing Web site addresses to obtain copies of agency forms); (5) § 2411.5(b) (requiring requesters to state they will assume financial liability for FOIA processing fees); (6) § 2411.6(a) (adding language to give requester the opportunity to discuss/clarify request so that it may be modified, if necessary, to meet regulatory requirements); (7) § 2411.8(b) (moving language from § 2411.13(c)(4) to set forth earlier the objective that requesters reasonably describe records sought); (8) § 2411.10(a)(2) (adding language to explain how to calculate the twenty day period for responding to appeal); (9) § 2411.10(a)(2)(i) and (b)(2)(i) (providing consistency with other sections regarding the cut-off amount at which fees ($250 and above) will be requested in advance of information production); (10) § 2411.10(a)(2)(ii) and (b)(2)(ii) (providing for information production before payment of fees below $250 if no history of failure to pay fees on time); (11) § 2411.13(a)(2) (adding language to inform requesters that searches will be conducted in the most efficient and least expensive manner reasonably possible); (12) § 2411.13(b)(4)(ii)(A) thru (D) (adding language to set forth more clearly the factors to be considered in determining when fees should be waived because a disclosure is in the ''public interest''); (13) § 2411.13(b)(4)(iii)(A) and (B) (adding language clarifying when a requester's interest is ''primarily commercial''); (14) § 2411.13(b)(4)(v) (adding language to clarify when partial fees will be assessed); (15) § 2411.13(h) (adding language related to handling requests by other than a party to a proceeding before the agency for a copy of a transcript, diskette, or other recordation of the proceeding); and (16) § 2411.14 (providing information on record retention and preservation).

The Authority has added language relating to the role of the Inspector General throughout the regulation (*i.e.*, purpose (§ 2411.1), scope (§ 2411.2), information policy (§ 2411.4), procedures for obtaining information (§ 2411.5)), when requests for information relate to records, documents, or other information of the Inspector General for the Authority.

Finally, the Authority has deleted former § 2411.11 and replaced it with a new part 2417. *See* 74 FR 11634 (March 14, 2009).

Accordingly, the Authority proposes to revise its regulations implementing the FOIA and put them out for public comment. The Authority reproduces proposed 5 CFR part 2411 in its entirety.

Executive Order 12866

The Authority is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

Executive Order 13132

The Authority is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Authority has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities, because this rule only applies to Federal employees, Federal agencies, and labor organizations representing Federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2411

Freedom of Information Act.

For the reasons stated in the preamble, the Authority proposes that 5 CFR part 2411 be revised as follows:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

Sec.
2411.1 Purpose.
2411.2 Scope.
2411.3 Delegation of authority.
2411.4 Information policy.
2411.5 Procedure for obtaining information.
2411.6 Identification of information requested.
2411.7 Format of disclosure.
2411.8 Time limits for processing requests.
2411.9 Business information.
2411.10 Appeal from denial of request.
2411.11 Modification of time limits.
2411.12 Effect of failure to meet time limits.
2411.13 Fees.
2411.14 Record retention and preservation.
2411.15 Annual report.

Authority: 5 U.S.C. 552, as amended and OPEN Government Act of 2007, Pub. L. No. 110–175, 121 Stat. 2524; E.O. 13392 (Dec. 14, 2005); and E.O. 12600 (June 23, 1987).

§ 2411.1 Purpose.

This part contains the regulations of the Federal Labor Relations Authority (Authority), the General Counsel of the Federal Labor Relations Authority (General Counsel), the Federal Service Impasses Panel (Panel) and the Inspector General of the Federal Labor Relations Authority (IG) providing for public access to information from the Authority, the General Counsel, the Panel or the IG. These regulations implement the Freedom of Information Act, as amended, 5 U.S.C. 552, and the policy of the Authority, the General Counsel, the Panel and the IG to disseminate information on matters of interest to the public and to disclose to members of the public on request such information contained in records insofar as is compatible with the discharge of their responsibilities, consistent with applicable law.

§ 2411.2 Scope.

(a) For the purpose of this part, the term record and any other term used in reference to information includes any information that would be subject to the requirements of 5 U.S.C. 552 when maintained by the Authority, the General Counsel, the Panel or the IG in any format including an electronic format. All written requests for information from the public that are not processed under part 2412 of this chapter will be processed under this part. The Authority, the General Counsel, the Panel and the IG may continue, regardless of this part, to furnish the public with the information it has furnished in the regular course of performing its official duties, unless furnishing the information would

violate the Privacy Act of 1974, 5 U.S.C. 552a, or another law.

(b) When the subject of a record, or the subject's representative, requests the record from a Privacy Act system of records, as that term is defined by 5 U.S.C. 552a(a)(5), and the Authority retrieves the record by the subject's name or other personal identifier, the Authority will handle the request under the procedures and subject to the fees set out in part 2412. When a third party requests access to those records, without the written consent of the subject of the record, the Authority will process the request under this part.

(c) Nothing in 5 U.S.C. 552 or this part requires that the Authority, the General Counsel, the Panel or the IG, as appropriate, create a new record in order to respond to a request for the records.

§ 2411.3 Delegation of authority.

(a) *Chief FOIA Officer*. The Chairman of the Federal Labor Relations Authority designates the Chief FOIA Officer who has agency-wide responsibility for the efficient and appropriate compliance with the FOIA. The Chief FOIA Officer monitors the implementation of the FOIA throughout the agency.

(b) *Authority/General Counsel/Panel/IG*. Regional Directors of the Authority, the Freedom of Information Officer of the Office of the General Counsel, Washington, DC, the Solicitor of the Authority, the Executive Director of the Panel and the IG are delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization under § 2411.5(a) & (b).

(c) *FOIA Public Liaison(s)*. The Chief FOIA Officer shall designate the FOIA Public Liaison(s), who shall serve as the supervisory official(s) to whom a FOIA requester can raise concerns about the service the FOIA requester has received following an initial response.

§ 2411.4 Information policy.

(a) *Authority/General Counsel/Panel/IG*. (1) It is the policy of the Authority, the General Counsel, the Panel and IG to make available for public inspection and copying (unless they are published and copies are offered for sale):

(i) Final decisions and orders of the Authority and administrative rulings of the General Counsel; and procedural determinations, final decisions and orders of the Panel; and factfinding and arbitration reports; and reports and executive summaries of the IG;

(ii) Statements of policy and interpretations which have been adopted by the Authority, the General Counsel, the Panel or the IG and are not published in the **Federal Register**;

(iii) Administrative staff manuals and instructions to staff that affect a member of the public (except those establishing internal operating rules, guidelines, and procedures for the investigation, trial, and settlement of cases);

(iv) Copies of all records, regardless of form or format, which have been released to any person under 5 U.S.C. 552(a)(3) and which, because of the nature of their subject matter, the Authority, the General Counsel, the Panel or the IG determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(v) A general index of the records referred to in paragraph (a)(1)(i) through (iv) of this section.

(2) It is the policy of the Authority, the General Counsel, the Panel and the IG to make promptly available for public inspection and copying, upon request by any person, other records where the request reasonably describes such records and otherwise conforms to the procedures of this part.

(b) *Records Availability*. (1) Any person may examine and copy items in § 2411.4(a)(1)(i) through (iv), at each regional office of the Authority and at the offices of the Authority, the General Counsel, the Panel and the IG, respectively, in Washington, DC, under conditions prescribed by the Authority, the General Counsel, the Panel and the IG, respectively, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the General Counsel, the Panel and the IG. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing. On the released portion of the record, the amount of information deleted, and the exemption under which the deletion is made, shall be indicated unless an interest protected by the exemption would be harmed.

(2) All records covered by this section are available through the Internet/World Wide-Web site *http://www.flra.gov/foia/reading_room.html*. The Web site containing these records may also be accessed:

(i) From a computer terminal located in the library at FLRA headquarters at 1400 K Street, NW., Washington, DC. Requests to use this terminal to access the FLRA's electronic Reading Room should be submitted to the FLRA's Office of the Solicitor (*mail:* Office of the Solicitor, FLRA, 1400 K Street, NW., Washington, DC 20424; telephone: 202–218–7770; e-mail: *solmail@flra.gov*); or

(ii) From computer terminals located in the FLRA regional offices. A listing of these offices, including appropriate information for requesting the use of the terminal, is provided in Appendix A to this part or at *http://www.flra.gov/foia/contacts.html*.

(c) The Authority, the General Counsel, the Panel and the IG shall maintain and make available for public inspection and copying the current indexes and supplements to the records which are required by 5 U.S.C. 552(a)(2) and, as appropriate, a record of the final votes of each member of the Authority and of the Panel in every agency proceeding. Any person may examine and copy such document or record of the Authority, the General Counsel, the Panel or the IG at the offices of either the Authority, the General Counsel, the Panel or the IG, as appropriate, in Washington, DC, under conditions prescribed by the Authority, the General Counsel, the Panel or the IG at reasonable times during normal working hours so long as it does not interfere with the efficient operations of either the Authority, the General Counsel, the Panel or the IG.

(d) All agency records, except those exempt from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), will be made promptly available to any person submitting a written request in accordance with the procedures of this part.

(e)(1) The formal documents constituting the record in a case or proceeding are matters of official record and, until destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying at the appropriate regional office of the Authority, or the offices of the Authority, the General Counsel, the Panel or the IG in Washington, DC, as appropriate, under conditions prescribed by the Authority, the General Counsel or the Panel at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the General Counsel or the Panel.

(2) The Authority, the General Counsel, the Panel or the IG, as appropriate, shall certify copies of the formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(f)(1) Copies of forms prescribed by the General Counsel for the filing of charges and petitions may be obtained without charge from any regional office of the Authority or on the Authority's Web site at: *http://www.flra.gov/forms/forms.html#gc*.

(2) Copies of forms prescribed by the Panel for the filing of requests may be obtained without charge from the Panel's offices in Washington, DC or on the Authority's Web site at: *http://www.flra.gov/forms/flra_14.pdf*.

§ 2411.5 Procedure for obtaining information.

(a) *Authority/General Counsel/Panel/IG.* Any person who desires to inspect or copy any records, documents or other information of the Authority, the General Counsel, the Panel or the IG, covered by this part, other than those specified in paragraphs (a)(1) and (c) of § 2411.4, shall submit a written or e-mail request (*see* office and e-mail addresses listed at *http://www.flra.gov/foia/contacts.html*) to that effect as follows:

(1) If the request is for records, documents or other information in a regional office of the Authority, it should be made to the appropriate Regional Director;

(2) If the request is for records, documents or other information in the Office of the General Counsel and located in Washington, DC, it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC;

(3) If the request is for records, documents or other information in the offices of the Authority in Washington, DC, it should be made to the Solicitor of the Authority, Washington, DC;

(4) If the request is for records, documents or other information in the offices of the Panel in Washington, DC, it should be made to the Executive Director, Federal Service Impasses Panel, Washington, DC; and

(5) If the request is for records, documents or other information in the offices of the IG in Washington, DC, it should be made to the Inspector General, Washington, DC.

(b) Each request under this part should be clearly and prominently identified as a request for information under the Freedom of Information Act and, if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly identified as such on the envelope or other cover. The request must contain a specific statement assuming financial liability for the direct costs of responding to the request. The request should identify any ceiling dollar amount applicable. Fee charges will be assessed for the full allowable direct costs of document search, review, and duplicating, as appropriate, in accordance with § 2411.13. If a request does not comply with the provisions of this paragraph, it shall not be deemed received by the appropriate Regional Director, the Freedom of Information Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate. A list of the office and e-mail addresses is in Appendix A to 5 CFR Chapter XIV and on the Federal Labor Relations Authority's World Wide Web site at *http://www.flra.gov/foia/contacts.html*.

§ 2411.6 Identification of information requested.

(a) Each request under this part shall reasonably describe the records being sought in a way that they can be identified and located. A request shall be legible and include all pertinent details that will help identify the records sought. Requesters may be given an opportunity to discuss their requests so that they may be modified to meet the requirements of this section.

(b) If the description is insufficient, the officer processing the request will so notify the person making the request and indicate the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought.

(c) Upon receipt of a request for records, the appropriate Regional Director, the Freedom of Information Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, shall enter it in a public log. The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to paragraphs (b) and (c) of § 2411.8, the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

§ 2411.7 Format of disclosure.

(a) After a determination has been made to grant a request in whole or in part, the appropriate Regional Director, the Freedom of Information Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel or the IG, as appropriate, will notify the requester in writing. The notice will describe the manner in which the record will be disclosed. The appropriate Regional Director, the Freedom of Information Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel or the IG, as appropriate, will provide the record in the form or format requested if the record is readily reproducible in that form or format, provided the requester has agreed to pay and/or has paid any fees required by § 2411.13 of this part. The appropriate Regional Director, the Freedom of Information Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, will determine on a case-by-case basis what constitutes a readily reproducible format. These offices will make a reasonable effort to maintain their records in commonly reproducible forms or formats.

(b) Alternatively, the appropriate Regional Director, the Freedom of Information Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, may make a copy of the releasable portions of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection will not unreasonably disrupt the operations of the office.

§ 2411.8 Time limits for processing requests.

(a) The 20-day period (excepting Saturdays, Sundays, and legal public holidays), established in this section, shall commence on the date on which the request is first received by the appropriate component of the agency (Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG of the Authority), but in any event not later than ten days after the request is first received by any Authority component responsible for receiving FOIA requests under part 2411. The 20-day period does not run when—

(1) The agency component makes one request to the requester for information and is awaiting such information that it has reasonably requested from the requester; or

(2) It is necessary to clarify with the requester issues regarding fee assessment.

(3) The agency component's receipt of the requested information or clarification triggers the commencement of the 20-day period.

(b) A request for records shall be logged in by the appropriate Regional Director, the Freedom of Information Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel or the IG, as appropriate, pursuant to § 2411.6(c). All requesters must reasonably describe the records sought. An oral request for records shall not begin any time requirement. A written request for records sent to other than the

appropriate officer will be forwarded to that officer by the receiving officer, but in that event the applicable time limit for response shall begin as set forth in paragraph (a) of this section.

(c) Except as provided in § 2411.11, the appropriate Regional Director, the Freedom of Information Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, shall, within twenty (20) working days following receipt of the request, as provided by paragraph (a) of this section, respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(1) If all the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the response shall so state.

(2) If all of the records have not been located or a final determination has not been made with respect to disclosure of all the records requested, the response shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) If the request is expected to involve allowed charges in excess of $250.00, the response shall specify or estimate the fee involved and shall require prepayment of any charges in accordance with the provisions of paragraph (g) of § 2411.13 before the request is processed further.

(4) Whenever possible, subject to the provisions of paragraph (g) of § 2411.13, the response relating to a request for records that involves a fee of less than $250.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority, the General Counsel or the Panel.

(5) Search fees shall not be assessed requesters (or duplication fees in the case of an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media requester, as defined by § 2411.13(a)(8)), under this subparagraph if an agency component fails to comply with any time limit under paragraph (a) of this section, if no unusual or exceptional circumstances (as those terms are defined for purposes of § 2411.11(a)) apply to the processing of the request.

(d) If a request will take longer than ten days to process:

(1) An individualized tracking number will be assigned to the request and provided to the requester; and

(2) Using the tracking number, the requester can find, by calling (202) 218–7770 or linking to *http://www.flra.gov/foia/foia_main.html*, status information about the request including:

(i) The date on which the agency originally received the request; and

(ii) An estimated date on which the agency will complete action on the request.

(e) If any request for records is denied in whole or in part, the response required by paragraph (c) of this section shall notify the requester of the denial. Such denial shall specify the reason therefore, set forth the name and title or position of the person responsible for the denial, and notify the person making the request of the right to appeal the denial under the provisions of § 2411.10.

§ 2411.9 Business information.

(a) *In general.* Business information obtained by the Authority from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) Business information means commercial or financial information obtained by the Authority from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from whom the Authority obtains business information, directly or indirectly. The term includes corporations; State, local, and Tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Authority shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Authority has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* The Authority will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the Authority until after its disclosure decision has been made shall not be considered by the Authority. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Authority shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the Authority decides to disclose business information over the objection of a submitter, the Authority shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The Authority determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the Authority shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Authority shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever the Authority provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the Authority shall also notify the requester(s). Whenever the Authority notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the Authority shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Authority shall notify the requester(s).

§ 2411.10 Appeal from denial of request.

(a) *Authority/General Counsel/Panel/IG.* (1) Whenever any request for records is denied, a written appeal may be filed within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. If the denial was made by a Regional Director or by the Freedom of Information Officer of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC. If the denial was made by the Executive Director of the Panel, the appeal shall be filed with the Chairman of the Panel. If the denial was made by the Solicitor or the IG, the appeal shall be filed with the Chairman of the Authority in Washington, DC.

(2) The Chairman of the Authority, the Chairman of the Panel or the General Counsel, as appropriate, shall, within twenty (20) working days (excepting Saturdays, Sundays, and legal public holidays) from the time of receipt of the appeal, except as provided in § 2411.11, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be granted.

(i) If the determination is to grant the request and the request is expected to involve an assessed fee in excess of $250.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of § 2411.13 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than $250.00 shall be accompanied by the requested records when there is no history of the requester having previously failed to pay fees in a timely manner. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority, the Panel, the General Counsel or IG.

(b) If on appeal the denial of the request for records is upheld in whole or in part by the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, as appropriate, the person making the request shall be notified of the reasons for the determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairman of the Authority, the General Counsel or the Chairman of the Panel, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

§ 2411.11 Modification of time limits.

(a) In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the agency component handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As appropriate, the notice shall provide the requester with an opportunity to limit the scope of the request so that it may be processed within the time limit or an opportunity to arrange with the agency component an alternative time frame for processing the request or a modified request. To aid the requester, the FOIA Public Liaison shall assist in the resolution of any disputes between the requester and the processing agency component. No such notice shall specify a date that would result in a total extension of more than ten (10) working days.

(b) As used in this section, ''unusual or exceptional circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(c) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person's knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within ten (10) calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, ''compelling need'' means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

§ 2411.12 Effect of failure to meet time limits.

Failure by the Authority, the General Counsel, the Panel, or the IG either to

deny or grant any request under this part within the time limits prescribed by the Freedom of Information Act, as amended, 5 U.S.C. 552, and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

§ 2411.13 Fees.

(a) *Definitions.* For the purpose of this section:

(1) The term *direct costs* means those expenditures which the Authority, the General Counsel, the Panel, or the IG actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents as well as all reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be done manually or by computer using existing programming. The Authority, the General Counsel, the Panel or the IG shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, if duplicating an entire document would be quicker and less expensive, a line-by-line search should not be done.

(3) The term *duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (*e.g.,* magnetic tape or disk), among others.

(4) The term *review* refers to the process of examining documents located in response to a commercial use request (*see* paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term *''commercial use'' request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Authority, the General Counsel, the Panel, or the IG will look first to the use to which a requester will put the document requested. Where the Authority, the General Counsel, the Panel, or the IG has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Authority, the General Counsel, the Panel, or the IG may seek additional clarification before assigning the request to a specific category.

(6) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term *representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term 'news' means information that is about current events or that would be of current interest to the public. Examples of news-media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not intended to be all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(b) *Exceptions to fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the Authority, the General Counsel, the Panel or the IG will provide the first 100 pages of duplication and the first two hours of search time without charge. The word ''pages'' in this paragraph refers to paper copies of standard size, usually 8½ by 11, or their equivalent in microfiche or computer disks. The term ''search time'' in this paragraph is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the Authority, the General Counsel, the Panel or the IG will begin assessing charges for computer search.

(2) The Authority, the General Counsel, the Panel or the IG will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3) As provided in § 2411.8(c)(5), the Authority, the General Counsel, the Panel or the IG will not charge search fees (or duplication fees if the requester is an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media, as described in this section), when the time limits are not met.

(4)(i) The Authority, the General Counsel, the Panel or the IG will provide documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the ''public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government'' under paragraph (b)(4)(i) of this section, the Authority, the General Counsel, the Panel, and the IG will consider the following factors:

(A) *The subject of the request.* Whether the subject of the requested

records concerns ''the operations or activities of the government.'' The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated;

(B) *The informative value of the information to be disclosed.* Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding;

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to ''public understanding.'' The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration; and

(D) *The significance of the contribution to the public understanding.* Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The Authority, the General Counsel, the Panel and the IG shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ''important'' enough to be made public.

(iii) In determining whether disclosure ''is not primarily in the commercial interest of the requester'' under paragraph (b)(4)(i) of this section, the Authority, the General Counsel, the Panel and the IG will consider the following factors:

(A) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure. Commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (a)(5) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration; and,

(B) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure ''is primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Authority, the General Counsel, the Panel, and the IG ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(iv) A request for a fee waiver based on the public interest under paragraph (b)(4)(i) of this section must address these factors as they apply to the request for records in order to be considered by the Authority, the General Counsel, the Panel, or the IG.

(v) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(c) *Level of fees to be charged.* The level of fees to be charged by the Authority, the General Counsel, the Panel, or the IG, in accordance with the schedule set forth in paragraph (d) of this section, depends on the category of the requester. The fee levels to be charged are as follows:

(1) A request for documents appearing to be for commercial use will be charged to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(2) A request for documents from an educational or non-commercial scientific institution will be charged for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) The Authority, the General Counsel, the Panel or the IG shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(4) The Authority, the General Counsel, the Panel or the IG shall charge requesters who do not fit into any of the categories of this section fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from record subjects for records about themselves filed in Authority, General Counsel, or Panel systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction.

(d) The following fees shall be charged in accordance with paragraph (c) of this section:

(1) *Manual searches for records.* The salary rate (*i.e.,* basic pay plus 16 percent) of the employee(s) making the search. Search time under this paragraph and paragraph (d)(2) of this section may be charged for even if the Authority, the General Counsel, the Panel or the IG fails to locate records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* The actual direct cost of providing the service, including computer search time directly attributable to searching for records responsive to a FOIA request, runs, and operator salary apportionable to the search.

(3) *Review of records.* The salary rate (*i.e.,* basic pay plus 16 percent) of the employee(s) conducting the review. This charge applies only to requesters who are seeking documents for commercial use, and only to the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, and not at the administrative appeal level of an exemption already applied.

(4) *Duplication of records.* Twenty-five cents per page for paper copy reproduction of documents, which the Authority, the General Counsel, the Panel and the IG determined is the

reasonable direct cost of making such copies, taking into account the average salary of the operator and the cost of the reproduction machinery. For copies of records prepared by computer, such as tapes or printouts, the Authority, the General Counsel, the Panel or the IG shall charge the actual cost, including operator time, of production of the tape or printout.

(5) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(e) *Aggregating requests.* When the Authority, the General Counsel, the Panel or the IG reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Authority, the General Counsel, the Panel or the IG will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged those requesters who fail to pay fees charged, beginning on the 30th day following the billing date. Receipt of a fee by the Authority, the General Counsel, the Panel or the IG, whether processed or not, will stay the accrual of interest.

(g) *Advanced payments.* The Authority, the General Counsel, the Panel or the IG will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Authority, the General Counsel, the Panel or the IG estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then the Authority, the General Counsel, the Panel or the IG will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.,* within 30 days of the date of the billing), in which case the Authority, the General Counsel, the Panel or the IG requires the requester to pay the full amount owed plus any applicable interest as provided of this section or demonstrate that the requester has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the Authority, the General Counsel, the Panel or the IG acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.,* 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the Authority, the General Counsel, the Panel or the IG has received fee payments described of this section.

(h) When a person other than a party to a proceeding before the agency makes a request for a copy of a transcript, diskette, or other recordation of the proceeding, the Authority, the General Counsel, the Panel or the IG, as appropriate, will handle the request under this part.

(i) Payment of fees shall be made by check or money order payable to the U.S. Treasury.

§ 2411.14 Record retention and preservation.

The Authority, the General Counsel, the Panel, and the IG shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until such time as disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 2411.15 Annual report.

On or before February 1 annually, the Chief FOIA Officer of the Authority shall submit a report of the activities of the Authority, the General Counsel, the Panel, and the IG with regard to public information requests during the preceding fiscal year to the Attorney General of the United States. The report shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically.

Carol Waller Pope,

Chairman.

[FR Doc. E9–17242 Filed 7–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0614; Directorate Identifier 2009–NM–045–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and Model ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> It has been found the occurrence of outboard slat skew sensor failure in open or closed position. The combination of an outboard slat skew sensor failed closed, an outboard slat actuator structural failure (rupture) and its adjacent actuator torque limiter failing high (allows higher loads to the panel structure) occurring in the same slat surface, under normal flight loads, may lead [the] slat surface to detach from the wing with the possibility of hitting and damaging the horizontal stabilizer and elevator, which may affect the airplane controllability.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 21, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A.

(EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.*

You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0614; Directorate Identifier 2009–NM–045–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2009–02–02 and 2009–02–03, both dated February 16, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been found the occurrence of outboard slat skew sensor failure in open or closed position. The combination of an outboard slat skew sensor failed closed, an outboard slat actuator structural failure (rupture) and its adjacent actuator torque limiter failing high (allows higher loads to the panel structure) occurring in the same slat surface, under normal flight loads, may lead [the] slat surface to detach from the wing with the possibility of hitting and damaging the horizontal stabilizer and elevator, which may affect the airplane controllability.

* * * * *

Corrective actions include repetitive operational tests of the outboard slat skew sensor, and replacement with a serviceable outboard slat skew sensor if necessary. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 223 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $35,680, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2009–0614; Directorate Identifier 2009–NM–045–AD.

Comments Due Date

(a) We must receive comments by August 21, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes certificated in any category, identified in paragraphs (c)(1) and (c)(2) of the AD.

(1) EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes, equipped with outboard slat skew sensor part number (P/N) 1702286A or 1702288A.

(2) EMBRAER Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes, equipped with outboard slat skew sensor P/N 1702286A or 1702288A.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the occurrence of outboard slat skew sensor failure in open or closed position. The combination of an outboard slat skew sensor failed closed, an outboard slat actuator structural failure (rupture) and its adjacent actuator torque limiter failing high (allows higher loads to the panel structure) occurring in the same slat surface, under normal flight loads, may lead [the] slat surface to detach from the wing with the possibility of hitting and damaging the horizontal stabilizer and elevator, which may affect the airplane controllability.

* * * * *

Corrective actions include repetitive operational tests of the outboard slat skew sensor, and replacement with a serviceable outboard slat skew sensor if necessary.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the applicable compliance time in paragraph (f)(1)(i) or (f)(1)(ii) of this AD: Perform an operational test (OPT) of any outboard slat skew sensor having P/N 1702286A or P/N 1702288A. If any outboard slat skew sensor fails the test, replace the sensor with a serviceable sensor before further flight. Do the actions using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent).

(i) For Model ERJ 170 airplanes: Within 1,320 flight hours after the effective date of this AD.

(ii) For Model ERJ 190 airplanes: Within 1,320 flight hours or 12 months after the effective date of this AD, whichever occurs first.

Note 1: Guidance about performing the OPT required by paragraph (f)(1) of this AD can be found in Task 27–83–01–710–801–A, ''Outboard Slat Skew Sensor—Operational Test,'' dated October 28, 2008, of the Embraer 170/175 or 190 Aircraft Maintenance Manual (AMM).

Note 2: For the purpose of this AD, an OPT is ''A task to determine if an item is fulfilling its intended purpose. Since it is a failure-finding task, it does not require quantitative tolerances.''

Note 3: For the purpose of this AD, a serviceable sensor is one that has passed the OPT required by paragraph (f)(1) of this AD.

(2) Repeat the OPT required by paragraph (f)(1) of this AD thereafter at intervals not to exceed 1,320 flight hours.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directives 2009–02–02 and 2009–02–03, both dated February 16, 2009, for related information.

Issued in Renton, Washington, on July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–17347 Filed 7–21–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AU92

Subsistence Management Regulations for Public Lands in Alaska; Kenai Peninsula Subsistence Resource Region

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the Federal Subsistence Board, are withdrawing the proposed rule to amend the regulations governing subsistence use of fish and wildlife in Alaska by creating an additional subsistence resource region for the Kenai Peninsula. We received significant adverse comments on our proposal, and we have decided not to pursue this action.

DATES: The proposed rule published at 71 FR 46427, August 14, 2006 and extended at 71 FR 56421, September 27, 2006 is withdrawn effective July 22, 2009.

FOR FURTHER INFORMATION CONTACT: For Forest Service questions, contact Calvin H. Casipit, Acting Regional Subsistence Program Leader, USDA–FS Alaska Region, at (907) 586–7918. For Fish and Wildlife Service questions, contact Peter J. Probasco at (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This

program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations several times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subpart B of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is made up of:

- Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- Alaska Regional Director, U.S. Fish and Wildlife Service;
- Alaska Regional Director, U.S. National Park Service;
- Alaska State Director, U.S. Bureau of Land Management;
- Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which set forth the basic program, and they continue to work together on regularly revising the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

Federal Subsistence Regional Advisory Councils

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Kenai Peninsula

The Kenai Peninsula in Alaska has unique fish and wildlife management challenges resulting from intense use of the Peninsula's fish and wildlife by local and nonlocal residents and by nonresidents and from the Board's actions to provide a meaningful subsistence priority for fisheries in Federally managed fresh waters on the Kenai Peninsula. Kenai Peninsula lands primarily under Federal management include the Chugach National Forest and the Kenai National Wildlife Refuge. The Departments published a proposed rule in the **Federal Register** on August 14, 2006 (71 FR 46427), to create a separate subsistence resource region for the Kenai Peninsula and requested public comments until September 18, 2006. On September 27, 2006, we published a document to extend the comment period on this proposed rule until November 9, 2006 (71 FR 56421).

Withdrawal of Proposed Rule

During a Southcentral Federal Subsistence Regional Advisory Council meeting held in Anchorage, Alaska on August 24, 2006, we heard significant adverse testimony regarding the creation of a new Kenai Peninsula Subsistence Resource Region. Additionally, the Southcentral Regional Council unanimously recommended against the formation of such a region. Letters from the public also strongly opposed the formation of such a region. Therefore, we are withdrawing the proposed rule.

For the reasons stated above, the Federal Subsistence Board withdraws the proposed rule of August 14, 2006 (71 FR 46427).

Dated: June 18, 2009.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: June 18, 2009.

Calvin H. Casipit,

Acting Subsistence Program Leader, USDA—Forest Service.

[FR Doc. E9–17283 Filed 7–21–09; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3010

[Docket No. RM2009–8; Order No. 246]

Postal Rates

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise a rounding convention used in the statutory price cap calculation for purposes of establishing rates for certain postal products. This document invites public comment on the proposal.

DATES: Initial comments due August 21, 2009; reply comments due September 8, 2009.

ADDRESSES: Submit comments electronically via the Commission's electronic Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory History

72 FR 63662 (November 9, 2007).
74 FR 27843 (June 11, 2009).

I. Introduction
II. Background and Proposed Amendments
III. Public Representative
IV. Ordering Paragraphs

I. Introduction

This rulemaking is an outgrowth of issues raised in Docket No. R2009–4, the most recent price adjustment filed by the Postal Service and approved by the Commission. The Postal Accountability and Enhancement Act (PAEA), Public Law No. 109–435, 120 Stat. 3198 (2006), affords the Postal Service significant flexibility in setting prices, provided it complies with certain objectives and factors and does not raise rates in excess of an inflation-based cap.

In Order No. 43, the Commission established ratemaking regulations for market dominant and competitive products.[1] In that order, the Commission created a formula to derive a ratemaking authority limitation for the Postal Service based upon the Consumer Price Index for All Urban Consumers (CPI–U) as reported by the Bureau of Labor Statistics (BLS). *Id.* at 47–48, 121–122. The limitation is calculated as the ratio of the most recent 12 month average of the CPI–U to the preceding 12 month average of the CPI–U and subtracting 1. *Id.* As noted in Order No. 43, the BLS began reporting the CPI–U index to three decimal places (when previously it was reported to one decimal place). *Id.* at 48.

II. Background and Proposed Amendments

The Commission elected to round the result and express the percentage change in the CPI–U using one decimal place. *Id.* This result was driven by practical considerations. Precision requires both the recent average and the

[1] Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43).

base average have the same number of significant digits; at the conclusion of Docket No. RM2007–1, neither the recent average nor the base average could be calculated to three decimal places. Inflation is also commonly expressed to one decimal place, and when the percentage change is reported by BLS, it is reported to one decimal place.

Due to several developments, the Commission believes calculating the CPI–U cap to three decimal places is now appropriate. The Postal Service, in utilizing its pricing flexibility under the PAEA, has proposed small rate adjustments that require more precision than a one decimal place cap allows. Adding two decimal places to the level of precision to the adjustment authority allows the Postal Service to fully exercise that flexibility. Enough time has lapsed since the BLS began reporting CPI–U indexes to 3 digits that both the recent average and the base average (a total of 24 months) may be calculated using the 3-digit method. The consistent reporting since January of 2007 (in terms of the number of significant digits) in the CPI–U indexes allows the Commission to calculate the rate adjustment authority to three decimal places without sacrificing precision. Moreover, the Postal Service's unused rate adjustment authority is calculated to three decimal places; therefore, calculating the annual or less than annual rate adjustment authority should use the same number of significant digits.

In Docket No. R2009–4, the Postal Service proposed, and the Commission approved, a rate decrease for Standard Mail High Density flats.[2] Intuitively, when the Postal Service implements a rate decrease for a class of mail, the result should be an increase in the amount of rate adjustment authority at the time of the next rate adjustment. However, as the incremental change for the Standard Mail class is minus 0.037 percent, the benefit from decreasing prices mid-year, which would be included in the amount of rate adjustment authority in the next rate adjustment, may be lost due to rounding.[3] Changing the Commission's rules on the calculation of the CPI–U cap to use the maximum number of significant digits allows the Postal Service to make more subtle adjustments for each class of mail.

The Commission, therefore, proposes to revise the last sentence of paragraph (a) of rule 3010.21 and paragraph (b) of rule 3010.22 to read ''The result is expressed as a percentage, rounded to three decimal places.'' Though the Commission's proposed changes are limited to these two sentences, the rules are presented in their entirety to provide useful additional context. In addition, the Commission is revising the heading of 39 CFR part 3010 to read as follows: Part 3010—Regulation of Rates for Market Dominant Products. This revision corrects an inadvertent error in the current heading, which reads, ''Regulation of Rules for Market Dominant Products.''

III. Public Representative

Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed the officer of the Commission (Public Representative) to represent the interests of the general public in the captioned docket.

IV. Ordering Paragraphs

It is ordered:

1. Docket No. RM2009–8 is established for the purpose of proposing amendments to the Commission's rules governing the price cap calculation in the system of ratemaking, 39 CFR part 3010.
2. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Interested persons may submit initial comments no later than 30 days from the date of publication of this notice in the **Federal Register**.
4. Reply comments may be filed no later than 45 days from the date of publication of this Notice in the **Federal Register.**
5. The Secretary shall arrange for publication of this Notice in the **Federal Register.**

List of Subjects in 39 CFR Part 3010

Administrative practice and procedure; Postal Service.

Issued: July 10, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

For the reasons discussed in the preamble, the Postal Regulatory Commission proposes to amend title 39 chapter III of the U.S. Code as follows:

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

1. The authority citation for 39 CFR part 3010 continues to read as follows:

Authority: 39 U.S.C. 503; 3622.

2. Revise § 3010.21 to read as follows:

§ 3010.21 Calculation of annual limitation.

(a) The calculation of an annual limitation involves three steps. First, a simple average CPI–U index is calculated by summing the most recently available 12 monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI–U index is similarly calculated by summing the 12 monthly CPI–U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the annual limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(b) The formula for calculating an annual limitation is as follows: Annual Limitation = (Recent Average/Base Average) − 1.

3. Revise § 3010.22 to read as follows:

§ 3010.22 Calculation of less than annual limitation.

(a) If a notice of rate adjustment is filed less than 1 year after the last Type 1–A or Type 1–B notice of rate adjustment applicable to an affected class of mail, then the annual limitation will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(b) The applicable partial year limitation is calculated in two steps. First, a simple average CPI–U index is calculated by summing the 12 most recently available monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 1 year after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) − 1.

[FR Doc. E9–17322 Filed 7–21–09; 8:45 am]

BILLING CODE 7710–FW–P

[2] *See* Docket No. R2009–4, Order Approving Price Adjustment for Standard Mail High Density Flats, July 1, 2009 (Order No. 236).

[3] *See* Library Reference PRC–RM2009–8–LR–1 for a numerical example of this result.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 09–114; RM 11417; FCC 09–58]

Amendment of Part 101 of the Commission's Rules To Accommodate 30 Megahertz Channels in the 6525–6875 MHz Band; Amendment of Part 101 of the Commission's Rules to Provide for Conditional Authorization on Additional Channels in the 21.8–22.0 GHz and 23.0–23.2 GHz Band; Fixed Wireless Communications Coalition Request for Waiver

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we seek comment on modifying the Commission's rules to authorize channels with bandwidths of as much as 30 MHz in the 6525–6875 MHz band. We also propose, on our own motion, to allow conditional authority on additional channels in the 21.8–22.0 GHz and 23.0–23.2 GHz band (23 GHz band).

DATES: Comments must be filed on or before August 21, 2009, and reply comments must be filed on or before September 8, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. You may submit comments, identified by WT Docket No. 09–114, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Charles Oliver, Attorney, Wireless Telecommunications Bureau at 202–418–1325 or via the Internet to *Charles.Oliver@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making (NPRM),* FCC 09–58, released June 29, 2009. The complete text of this document, including attachments and related Commission documents, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW. Washington, DC 20554. The complete text of the *NPRM* and related Commission documents may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, for example, FCC 09–58. The *NPRM* is available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-58A1.doc.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

I. Summary of Notice of Proposed Rulemaking

A. The 6 GHz Band

1. Most of the part 101 Fixed Service 6 GHz Band is made up of two sub-bands, 5925–6425 MHz (Lower 6 GHz Band) and 6525–6875 MHz (Upper 6 GHz Band). The Commission licenses terrestrial Fixed Services (FS) in both sub-bands, but there are several differences between them. The Commission issues licenses for satellite earth stations on a co-primary basis with FS in the Lower 6 GHz band but does not issue earth station licenses in the Upper 6 GHz Band. Lower 6 GHz channels are also available for television studio-to-transmitter links (STL) in the local television transmission service (LTTS); Upper 6 GHz channels are not. In addition, the maximum authorized bandwidth differs by sub-band: 30 megahertz is the maximum bandwidth allowed in the Lower 6 GHz Band, and 10 megahertz is the maximum allowed in the Upper 6 GHz Band. The Lower 6

GHz Band was historically assigned for wideband common carrier fixed use with 29.65 megahertz channels, while the Upper 6 GHz Band was historically assigned for private use with narrower channels. FWCC explains that fixed service bands such as the Lower 6 GHz Band and Upper 6 GHz Band carry critical services such as public safety communications (including police and fire vehicle dispatch), coordinating the movement of railroad trains, controlling natural gas and oil pipelines, regulating the electric grid, and backhaul for wireless traffic.

2. The Lower 6 GHz Band is increasingly congested. As of early May, 2009, there were 15,264 active FS licenses in the Lower 6 GHz Band. Furthermore, the Lower 6 GHz Band also has 1,602 licensed satellite earth stations. Each earth station is routinely coordinated for the entire 5925–6425 MHz band and for the entire geosynchronous arc, even if the earth station actually communicates with only one transponder on one satellite. Thus, a satellite earth station will place far greater limits on the ability to coordinate stations in adjacent areas than a terrestrial FS station, which is typically coordinated for a single channel, or a limited set of channels, with a narrow beamwidth. As noted above, existing rules also allow Lower 6 GHz FS stations to operate at up to triple the bandwidth authorized under existing Upper 6 GHz Band rules.

3. The congestion in the Lower 6 GHz Band has led a number of applicants to seek licenses to operate in the Upper 6 GHz Band pursuant to waivers that permit them to operate FS stations with bandwidths that are greater than the authorized 10 megahertz. As of May 11, 2009, the Commission had issued waivers authorizing 880 FS frequency paths with bandwidths greater than 10 megahertz in the Upper 6 GHz Band, of which 548 were authorized with 30 megahertz bandwidths. These waivers were granted upon showing that there were no channels available in the Lower 6 GHz Band, that other higher frequency bands were not suitable for the proposed path, and that there were no other alternatives. While the waiver process has provided an alternative for applicants seeking wider bandwidths in the Upper 6 GHz, some licensees have argued that the waiver process has the disadvantages of delay and additional preparation costs.

4. If certain conditions are met, the Commission's rules provide that applicants for FS licenses under part 101 may operate their proposed stations more quickly pursuant to conditional authority, although they do so at their own risk during the pendency of their applications. One of those conditions is that the applicant has successfully completed the frequency coordination procedures specified in § 101.103 of the Commission's rules. Conditional authority is not available, however, to applicants that must request waivers of existing rules.

5. On February 4, 2008, FWCC filed a petition proposing that the Commission change its rules to allow channels with 30 megahertz bandwidths in the Upper 6 GHz Band. Specifically, FWCC proposes that the Commission (1) amend § 101.109(c) of its rules to permit coordination and licensing of 30 megahertz channels in the Upper 6 GHz Band, (2) amend § 101.147(a) of the Commission's rules to state that coordination of a 30 megahertz link in the Upper 6 GHz Band should be attempted only if the link cannot be accommodated in the Lower 6 GHz Band, and (3) amend § 101.147(l) to specify frequency pairs for 30 megahertz channels, while retaining the present option of using narrowband channels and preserving frequencies that are presently allocated for emergency restoration.

6. FWCC states that the 10 megahertz maximum on authorized bandwidths in the Upper 6 GHz Band prevents links in that sub-band from handling data rates of more than about 50 megabits per second (Mbits/s). It asserts that larger bandwidths of up to 30 megahertz will allow the deployment of higher capacity broadband links and will enhance the delivery of critical infrastructure and business services when high-speed links are required over long distances. FWCC acknowledges that the Commission has granted waivers for bandwidths greater than 10 megahertz in the Upper 6 GHz Band, but argues that the unavailability of conditional authorizations represents a serious disadvantage. FWCC argues that FS facilities must often be installed on short notice to meet urgent public safety, infrastructure, and commercial needs, which makes conditional licensing important to industries and their customers. FWCC contends that applicants seeking to install high-speed links often have no alternative to the Upper 6 GHz Band.

7. To ensure that assignments for 30 megahertz links in the Upper 6 GHz will only be granted in cases of necessity, FWCC proposes that a new note be added to § 101.147(a) stating that location of a new 30 megahertz link in the Upper 6 GHz Band should be permitted only if it cannot be accommodated in the Lower 6 GHz Band. FWCC notes that existing rules already set minimum bits-per-second and loading requirements for the entire 6 GHz Band, and thereby discourage applicants from seeking wide-bandwidth assignments when narrower bandwidths would meet their needs.

8. Finally, FWCC proposes that § 101.147(l) be amended by adding a new paragraph to designate 30 megahertz bandwidth paired channels (for 60 megahertz total) at 6555 and 6725 MHz, 6595 and 6755 MHz, 6625 and 6785 MHz, 6655 MHz and 6815 MHz, and 6685 MHz and 6845 MHz. FWCC's proposed placement of those channels would avoid any overlap with the channels centered at 6535 and 6575 MHz, which are reserved for emergency restoration, maintenance bypass, and other temporary fixed uses.

9. AT&T, Comsearch, Harris, Radio Dynamics Corp., and UTC support FWCC's proposal. Those parties agree that the necessity of seeking waivers, and consequent inability to obtain conditional authorizations before the Commission approves applications, cause delays that have a significant impact on deployment of new services. They agree that there is rapidly increasing demand among wireless service providers for long-distance high-capacity links, and that there is limited space available in bands below the Upper 6 GHz Band, especially in major metropolitan areas. Commenters support FWCC's proposal that applicants for wide channels in the upper 6 GHz be required to demonstrate that the spectrum required is unavailable in the lower 6 GHz. Comsearch approves of FWCC's proposed channelization scheme and notes that the 30 megahertz channel pairs that FWCC proposes are formed by an appropriate aggregation of underlying 10 megahertz channels and eliminate any overlap with the channels at 6535 MHz and 6575 MHz that are reserved for emergency restoration and maintenance purposes.

10. API, however, argues that the Upper 6 GHz Band should be preserved for use by private operational fixed microwave licensees, including narrow bandwidth licensees that the Commission has required to vacate both the 1.9 GHz band and, more recently, the 2.1 GHz band. API contends that allowing 30 megahertz licenses in the Upper 6 GHz Band could cause congestion and encourage speculative licensing. API states that channel assignments for incumbent licensees in the 2.1 GHz band are generally limited to a maximum of 800 kHz, and that, as a consequence, those incumbents will not require 30 megahertz bandwidths when they are relocated. API contends that the availability of 30 megahertz

bandwidth channels in the lower 6 GHz is one of the reasons why the Lower 6 GHz Band has become congested, and that making such wide channels available in the upper 6 GHz would lead to similar congestion in the upper 6 GHz. That, in turn, it argues, could frustrate efforts to relocate displaced licensees from the 2.1 GHz band, potentially requiring them to resort to bands that cannot support the long signal paths that are feasible at 6 GHz.

11. FWCC and AT&T argue that API's concerns are misplaced. FWCC contends that the main source of congestion in the lower 6 GHz is satellite earth stations. FWCC contends that the Upper 6 GHz Band will probably not become seriously congested, whether or not 30 megahertz bandwidths are authorized, because satellite earth stations are not authorized in the Upper 6 GHz Band. FWCC also believes that the Commission's existing buildout and loading rules are sufficient to prevent speculative licensing. AT&T argues that the proposed rule changes would not frustrate the relocation plans of licensees that are forced to relocate from the 1.9 GHz and 2.1 GHz bands because, under existing rules, new licensees will be required to compensate displaced incumbents for the cost of relocations, regardless of whether the incumbent is relocated to a single link in the 6 GHz band or to multiple links in a higher band that requires shorter spacing between transmitters and receivers.

12. We propose to modify the Commission's rules to authorize 30 megahertz channels in the Upper 6 GHz Band. We find such action could serve the public interest by making more readily available an additional source of spectrum for high-speed microwave links. As FWCC states, such links support a variety of important commercial, public safety, and consumer uses, including backhaul for broadband systems. Furthermore, the high number of waiver requests we have received to allow licensing of channels greater than 10 megahertz in the Upper 6 GHz Band is evidence of a notable demand for wider channels in this band. We have already approved waivers for many applicants based on their showings that the applicants had no available alternative to operating in the Upper 6 GHz Band. We seek comment on this proposal.

13. We also seek comment on API's concerns that allowing 30 megahertz channels in the Upper 6 MHz Band could lead to congestion and speculative licensing. In particular, we ask commenters to indicate whether waiver requests the Bureau has granted for 30 megahertz channels in the Upper 6 MHz Band have caused problems to relocating licensees. Further, we ask commenters to indicate whether the Upper 6 GHz Band has any special characteristics that would cause it to be particularly susceptible to speculative licensing. We note that thirty megahertz channels in the 6 GHz band are already required to have a minimum payload capacity of 134.1 Mbits/s, and they must load at least 50 percent of that capacity within 30 months after they are licensed. In addition, our rules require FS links in the 6 GHz band to have a minimum path length of 17 kilometers (km). We seek comment on whether these requirements provide assurance that spectrum in the Upper 6 GHz Band will be used efficiently.

14. We also seek comment on whether additional requirements are necessary to ensure efficient usage, in the event that we allow 30 megahertz channels in the Upper 6 MHz Band. In particular, we seek comment on FWCC's proposal that we require applicants for 30 megahertz channels in the Upper 6 GHz Band to demonstrate that the requisite paths are not available in the Lower 6 GHz Band, as well as Comsearch's suggestion that we require a showing that channels in the 10.7–11.7 GHz band would not be available or sufficiently reliable.

15. In addition, we seek comment on whether authorizing 30 megahertz channels in the Upper 6 GHz Band would adversely impact the relocation of narrow-bandwidth links from other bands. We note API's concerns that sufficient spectrum be preserved to accommodate relocation of narrow-bandwidth links from other bands. We also note AT&T's assertion that most of the cost of relocating such licensees to higher bands, if that proves necessary, will fall upon the providers of emerging technologies that are newly licensed to the reallocated bands, not upon the displaced incumbents.

16. Further, we seek comment on the specific channel plan proposed by FWCC, which envisions 30 megahertz bandwidth paired channels (for 60 megahertz total for each authorized path) at 6555 and 6725 MHz, 6595 and 6755 MHz, 6625 and 6785 MHz, 6655 MHz and 6815 MHz, and 6685 MHz and 6845 MHz. We note that Comsearch and Harris support this proposal. We also seek comment on alternative band plans, in particular whether additional channel bandwidths besides 30 megahertz are needed.

B. 23 GHz Band

17. The Commission's rules provide for conditional authorization of fixed microwave links, allowing the license applicant to begin operating a link as soon as the application is filed, if the link has been frequency coordinated and certain other conditions are met. The frequencies in the 23 GHz band are shared by federal and non-federal users. For this reason, conditional authority in the band is limited to frequencies for which the Commission has an agreement with the National Telecommunications and Information Administration (NTIA) to permit conditional authorization. Thus, in the 23 GHz band, conditional authority is currently limited to four channel pairs—21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz, and 21.975/23.175 GHz—for non-federal applicants proposing to limit their equivalent isotropically radiated power (EIRP) to 55 dBm.

18. On November 7, 2007, FWCC submitted a petition for rulemaking requesting that the Commission allow conditional licensing for non-federal use, with NTIA's consent, in two additional channel pairs in the 23 GHz band—the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs—for applicants proposing to limit their EIRP to 55 dBm.

19. In response to FWCC's petition, we seek comment on whether to allow conditional authority on the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs for applicants proposing to limit their EIRP to 55 dBm, as set forth in the proposed rules in Appendix A. Our decision to seek comment on this proposal is predicated on NTIA's lack of opposition, following our coordination with that agency, to our granting conditional authority with respect to these additional channel pairs. The Commission has previously recognized that permitting conditional operation pending the approval of an application provides greater flexibility to Part 101 licensees and enables them to operate more efficiently.

II. Initial Paperwork Reduction Analysis

20. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002.

III. Initial Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared

this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *NPRM* for comments. The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

A. Need for, and Objectives of, the Proposed Rules

22. In this *NPRM,* we seek comment on a petition for rulemaking filed by the Fixed Wireless Communications Coalition (FWCC) on February 4, 2008, and on a rule change that we propose on our own motion.

23. The FWCC 6 GHz Petition requests that the Commission initiate a rulemaking to change its rules to allow channels with bandwidths of as much as 30 megahertz in the 6525–6875 MHz band (Upper 6 GHz Band). Specifically, FWCC proposes to amend § 101.109(c) of the Commission's rules to permit coordination and licensing of 30 megahertz channels in the Upper 6 GHz Band, amend § 101.147(a) of the Commission's rules to clarify that coordination of a 30 megahertz link in the Upper 6 GHz Band should be attempted only if the link cannot be accommodated in the 5925–6425 MHz band, and amend § 101.147(l) of the Commission's rules to specify frequency pairs for 30 megahertz channels, while retaining the present option of using narrowband channels and preserving frequencies that are presently allocated for emergency restoration.

24. The Lower 6 GHz Band, where 30 megahertz channels are allowed, is increasingly congested. As of early May, 2009, there were 15,264 active FS licenses in the Lower 6 GHz Band. Furthermore, the Lower 6 GHz Band also has 1,602 licensed satellite earth stations. Each earth station is routinely coordinated for the entire 5925–6425 MHz band, and for the entire geosynchronous arc, even if the earth station actually communicates with only one transponder on one satellite. Thus, a satellite earth station will place far greater limits on the ability to coordinate stations in adjacent areas than a terrestrial FS station, which is typically coordinated for a single channel, or a limited set of channels, with a narrow beamwidth.

25. The congestion in the Lower 6 GHz Band has led a number of applicants to seek licenses to operate in the Upper 6 GHz Band pursuant to waivers that permit them to operate FS stations with bandwidths that are greater than the authorized 10 megahertz. As of May 11, 2009, the Commission had issued waivers authorizing 880 FS frequency paths with bandwidths greater than 10 megahertz in the Upper 6 GHz Band, of which 548 were authorized with 30 megahertz bandwidths. These waivers were granted upon showing that there were no channels available in the Lower 6 GHz Band, that other higher frequency bands were not suitable for the proposed path, and that there were no other alternatives.

26. Allowing channels with bandwidths of as much as 30 megahertz in the Upper 6 GHz Band by rule could meet a variety of needs. Such action could serve the public interest by making more readily available an additional source of spectrum for high-speed microwave links, which are used for a variety of important commercial, public safety, and consumer uses, including backhaul for broadband systems. Furthermore, the high number of waiver requests we have received to allow licensing of channels greater than 10 megahertz in the Upper 6 GHz Band is evidence of a notable demand for wider channels in this band. On the other hand, the American Petroleum Institute (API) has expressed concern that allowing 30 megahertz licenses in the Upper 6 GHz Band could cause congestion, encourage speculative licensing, and make it more difficult for licensees to relocate out of the 2 GHz Band that has been reallocated for advanced technologies. The objective of the proposed rule is to provide the benefits of wider channels while avoiding the potential problems noted by API. We believe that increasing congestion in the Lower 6 GHz Band could justify expanding the maximum allowable bandwidth in the Upper 6 GHz Band to 30 megahertz. We also seek comment on concerns raised by the American Petroleum Institute Telecommunications Subcommittee that adopting these rules might lead to additional congestion in the upper 6 GHz band, cause speculative applications to be filed, and make it more difficult for applicants proposing narrower bandwidth links to coordinate their proposals with licensees in the Upper 6 GHz Band.

27. We also propose, on our own motion, to allow conditional licensing on two additional channel pairs for non-federal use in the 23 GHz band, if the National Telecommunications and Information Administration (NTIA) approves, for applicants proposing to limit their effective isotropically radiated power (E.I.R.P.) to 55 dBm.

28. If certain conditions are met, the Commission's rules provide that applicants for FS licenses under part 101 may operate their proposed stations more quickly pursuant to conditional authority, although they do so at their own risk during the pendency of their applications. Before exercising conditional authority, the applicant must successfully complete frequency coordination to ensure that the proposed facilities will not cause interference to other authorized facilities. Conditional authority ceases immediately if an application is returned as unacceptable for filing. The Commission's rules also provide that ''conditional authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises.''

29. Fixed service bands carry critical services such as public safety communications (including police and fire vehicle dispatch), coordinating the movement of railroad trains, controlling natural gas and oil pipelines, regulating the electric grid, and backhaul for wireless traffic. Conditional authority allows an applicant to provide those types of services expeditiously before the Commission acts on its application. Because the 23 GHz Band is shared between federal and non-federal use, conditional authority in that band is limited to frequencies for which the Commission has an agreement with NTIA to permit conditional authorization. NTIA has not stated any objection to allowing conditional licensing on the additional two channel pairs. We therefore propose to add the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs to the list of frequencies on which we allow conditional authority. Such action would allow all licensees to provide service more rapidly (subject to the normal limitations on conditional authority noted above) while protecting existing licensees. We seek comment on allowing conditional authority on a permanent basis.

B. Legal Basis

30. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i),

157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

31. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

32. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small. Wireless Telecommunications Carriers (except satellite).

33. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. The Commission's most recent data were acquired when ''Cellular and Other Wireless Telecommunications Companies'' was the applicable industry category. Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. This *NPRM* proposes no new reporting or recordkeeping requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

36. As noted above, this *NPRM* proposes rules to provide applicants with improved access to spectrum that is presently restricted with respect to bandwidth or that requires completion of frequency coordination with NTIA before the applicant can begin operations on a conditional basis. As noted above, virtually all microwave licensees under part 101 of the Commission's rules are considered small businesses. Under our rules, the opportunities to apply for 30 megahertz channels in the Upper 6 GHz Band and to take advantage of conditional authority 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs would be equally available to all applicants, including small businesses. Thus, this proposed action would provide additional options to all licensees, including small entity licensees. In this *NPRM,* we seek comment on these proposed actions. Such action could serve the public interest by facilitating the efficient use of the 6 GHz and 23 GHz bands. The proposed rules could therefore open up economic opportunities to a variety of spectrum users, including small businesses.

37. The alternative approach would be to maintain the existing rules. If the rules were not changed to provide for 30 megahertz channels in the Upper 6 GHz Band, applicants who wished to obtain such channels would have to take additional time and money to prepare a request for waiver of the Commission's rules. Such additional time and expense may be particularly disadvantageous to small businesses. Furthermore, because a waiver request would be required, applicants cannot commence operation until the Commission grants their waiver request and application. The resulting delay can make it more difficult for applicants to meet their communications needs or the needs of their customers. With respect to the 23 GHz Band, the alternative approach would be to deny conditional authority on the two additional channel pairs and require applicants to wait until the Commission grants their application before they can commence service. Again, the resulting delay can make it more difficult for applicants to meet their communications needs or the needs of their customers.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

38. Pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, that this NPRM is hereby ADOPTED.

39. Notice is given of the proposed regulatory changes described in this NPRM, and that comment is sought on these proposals.

40. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 101 to read as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 continues to read as follows:

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

2. Amend § 101.31 by revising paragraph (b)(1)(vii) to read as follows:

§ 101.31 Temporary and conditional authorizations.

* * * * *

(b) * * *

(1) * * *

(vii) With respect to the 21.8–22.0 GHz and 23.0–23.2 GHz band, the filed application(s) does not propose to operate on a frequency pair centered on other than 21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz, 21.975/23.175 GHz, 22.025/23.225 GHz or 22.075/23.275 GHz and does not propose to operate with an E.I.R.P. greater than 55 dBm. The center frequencies are shifted from the center frequencies listed above for certain bandwidths as follows: Add 0.005 GHz for 20 MHz bandwidth channels, add 0.010 GHz for 30 megahertz bandwidth channels, and subtract 0.005 GHz for 40 MHz bandwidth channels. *See* specific channel listings in § 101.147(s).

* * * * *

3. Amend § 101.109(c) table by revising the entry for the 6,525 to 6,875 Frequency band (MHz) to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency band (MHz)	Maximun authorized bandwidth
* * * * *	
6,525 to 6,875	30 MHz [1]
* * * * *	

4. Amend § 101.147 by revising entry 6,525–6,875 MHz (14) to entry 6,525–6,875 MHz (14)(33) in paragraph (a), by adding note (33) to paragraph (a) and by adding a new paragraph (l)(8) to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

* * * * *

6,525–6,875 MHz (14)(33)

* * * * *

(33) The coordination of a new 30 MHz link in the 6,525–6,825 MHz band should be attempted only if it cannot be accommodated in the 5,925–6,425 MHz band.

* * * * *

(l) * * *

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6555	6725
6595	6755
6525	6785
6655	6815
6685	6845

* * * * *

[FR Doc. E9–17412 Filed 7–21–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192, 193, and 195

[Docket No. PHMSA–2008–0301)

RIN 2137–AE41

Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to incorporate by reference (IBR) into the pipeline safety regulations all or parts of new editions of voluntary consensus standards to allow pipeline operators to use current technology, new materials, and other industry and management practices. In this document, PHMSA also proposes to make nonsubstantive edits and clarify regulatory language in certain provisions. These proposed amendments to the pipeline safety regulations would not require pipeline operators to undertake any significant new pipeline safety initiatives.

DATES: Submit comments on the subject of this proposed rule on or before September 21, 2009.

ADDRESSES: You may submit comments, identified by Docket No. PHMSA–2008–0301, by any of the following methods:

- *E-Gov Web: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Mail: Docket Management System:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* DOT Docket Management System: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Identify the docket ID, PHMSA 2008–0301, at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: All comments received will be posted without edits to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic 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). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://docketsinfo.dot.gov/.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Mike Israni, (202) 366–4571, or by e-mail at *mike.israni@dot.gov.*

Regulatory Information: Cheryl Whetsel by phone at (202) 366–4431 or by e-mail at *cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113; signed into law March 7, 1996)

directs Federal agencies to use voluntary consensus standards instead of government-written standards. The Office of Management and Budget (OMB) Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities sets the policies on Federal use and development of voluntary consensus standards. Voluntary consensus standards are standards developed or adopted by voluntary bodies that develop, establish, or coordinate technical standards using agreed upon procedures. These organizations update and revise their published standards every 3 to 5 years, to reflect modern technology and best technical practices.

PHMSA's Office of Pipeline Safety staff participates in more than 25 national voluntary consensus standards committees. There are more than 60 standards and specifications incorporated by reference in 49 CFR parts 192, 193, and 195. PHMSA's policy is to adopt voluntary consensus standards when they are applicable to pipeline design, construction, maintenance, inspection, and repair. PHMSA has the ultimate responsibility to ensure that the best interests of public safety are being served. When PHMSA believes some aspect of a standard does not meet this directive, it will not incorporate the new edition. PHMSA has reviewed the revised voluntary consensus standards proposed for incorporation in whole or in part in 49 CFR parts 192, 193, and 195.

Previous updates to incorporate industry standards by reference were published May 24, 1996 (61 FR 26121), June 6, 1996 (61 FR 2877), February 17, 1998 (63 FR 7721), June 14, 2004 (69 FR 32886), June 9, 2006 (71 FR 33402), and February 1, 2007 (72 FR 4657).

II. Updated Standards Not Incorporated by Reference

PHMSA will not propose to incorporate by reference the following updated ASTM International (ASTM), formerly known as the American Society of Testing and Materials, standards.

—ASTM D638; Standard Test Method for Tensile Properties of Plastics (2008 edition)
—ASTM D2513; Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings (2007 edition)
—ASTM D2517; Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings (2006)
—ASTM F1055; Standard Specification for Electrofusion-Type Polyethylene Fittings for Outside Diameter Controller Polyethylene Pipe and Tubing (2006)

PHMSA believes that a number of important issues need to be fully addressed by ASTM Committee F–17 and D20.10 before we adopt any new editions. Among these are the issues of appurtenances, marking and or traceability, increase in design factor, and qualifications requirements for new materials. Therefore, we are proposing to continue to reference in the gas pipeline safety regulations the standards found in ASTM D638 (2003 edition), (ASTM D2513 1987 and 1999 edition), ASTM D2517 (2000 edition) and ASTM F1055 (1998 edition) for plastic pipe and fittings.

PHMSA has determined that the following updated National Fire Protection Association (NFPA) standards will not be incorporated by reference at this time.

—NFPA 58; Liquefied Petroleum Gas Code (LP-Gas Code) (2008 edition)
—NFPA 59; Utility LP-Gas Plant Code (2008 edition)

PHMSA currently requires that the NFPA standards prevail if there is a conflict between Part 192 and NFPA Standards 58 or 59. PHMSA is proposing a change to paragraph (c) in § 192.11 for petroleum gas systems. This requirement was put in place to take advantage of more current petroleum gas transportation technology and safety practices. However, PHMSA has noticed that § 192.11(c) is consistently being misinterpreted by operators. Also, we believe the 2008 editions of NFPA Standards 58 and 59 have many conflicts with Part 192. Therefore, we are proposing to revise the regulation to require that Part 192 will prevail if there is a conflict between Part 192 and NFPA 58 or NFPA 59.

PHMSA believes the updated NFPA 58 would supplant the requirements of Part 192 with lesser criteria in the areas of damage prevention; odorization requirements; distribution valve maintenance; and operation and maintenance, emergency, and public awareness planning. In addition, because NFPA 58 does not apply retroactively, the 2008 revisions would not apply to those regulated facilities in existence before this edition was issued. This would create a situation where significant portions of Part 192 would apply to some facilities and NFPA 58 (2008) would apply to others. PHMSA also believes the 2008 edition of NFPA 59 is not in concert with the scope of pipeline facilities as designated in Part 192.1(b)(5), and with Subpart I—Requirements for Corrosion Control. Therefore, we are proposing to continue to reference in the pipeline safety regulations the standards found in NFPA 58 (2004) and NFPA 59 (2004).

III. Updated Standards Partially Incorporated by Reference

PHMSA is proposing to partially incorporate NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG) (2006 edition) at this time. We are proposing to reference in Part 193 only those specified sections of the 2006 edition pertaining to ultrasonic inspection and to seismic design. PHMSA believes that the NFPA 59A committee has yet to reconcile issues relating to dispersion analyses for vapor releases from process and safety equipment; containers with liquid penetrations at grade; design spill cases for full and double containment containers; standards for impoundment sizing for snow accumulation, severe weather, emergency depressurization, and fuel bunkering. Therefore, except for specified sections in the 2006 edition, PHMSA proposes to continue to reference NFPA 59A (2001).

IV. Updates to Standards Incorporated by Reference

PHMSA proposes the following new editions of currently-referenced standards for incorporation by reference (IBR) in parts 192, 193, and 195. PHMSA is also proposing to amend the titles in the applicable referenced sections to reflect the updated standards as appropriate. This notice proposes to incorporate all or parts of the latest editions of 39 voluntary consensus technical standards referenced in the pipeline safety regulations.

API RP 5L1 & API RP 5LW

PHMSA proposes to adopt American Petroleum Institute (API) Recommended Practice 5LW (API RP 5LW) ''Transportation of Line Pipe on Barges and Marine Vessels'' into 49 CFR parts 192 and 49 CFR 195. This newly-incorporated standard would be referenced in § 192.65 and a newly-created § 195.207. API RP 5LW would provide a standard for transportation of certain API Specification 5L steel line pipe by ship or barge on both inland and marine waterways. PHMSA also proposes to incorporate by reference API RP 5L1 into the newly-created § 195.207 similar to how it is incorporated by reference in § 192.65. This would provide a standard for liquid operators for the transportation of certain API Specification 5L steel line pipe by railroad.

API 620

PHMSA proposes to adopt API 620 (2008) ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' in 49 CFR Part 193 for seismic design and nondestructive examination. NFPA 59A (2006) incorporates by reference the 1990 edition of API 620 but PHMSA proposes to incorporate by reference the most recent version, API 620 (2008).

American Petroleum Institute (API)

• ANSI/API Spec 5L/ISO 3183 Specification for Line Pipe (44th edition, 2007), Includes Errata and Addendum (2009)
Replaces IBR: API Specification 5L, ''Specification for Line Pipe'' (43rd edition and errata, 2004);
Referenced in 49 CFR 192.55(e); 192.113; Item I, Appendix B to part 192; 195.106(b)(1)(i); 195.106(e).
• API Spec 5LW API Recommended Practice 5LW, ''Recommended Practice for 'Transportation of Line Pipe on Barges and Marine Vessels' '' (2nd edition, 1996)
Proposed to be IBR;
Proposed to be Referenced in 49 CFR 192.65(b); 195.207(b).
• API Spec 6D/ISO 14313 ''Pipeline Valves'' (23rd edition and errata 1, 2 and 3, (2009)
Replaces IBR: API Specification 6D ''Pipeline Valves'' (22nd edition, January 2002);
Referenced in 49 CFR 192.145(a); 195.116(d).
• ANSI/API 12F, Specification for Shop Welded Tanks for Storage of Production Liquids (11th edition errata, February 2007)
Replaces IBR: 11th edition, 1994;
Referenced in 49 CFR 195.132(b)(1); 195.205(b)(2); 195.264(b)(1); 195.264(e)(1); 195.307(a); 195.565; 195.579(d).
• ANSI/API 510, ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration,'' (9th edition, June 2006)
Replaces IBR: 8th edition, 1997 including Addenda 1 through 4;
Referenced in 49 CFR 195.205(b)(3); 195.432(c).
•API 620, ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' (11th edition, February 2008, Addendum 1, 2009)
Replaces IBR: 10th edition, 2002 including Addendum 1;
Referenced in 49 CFR 195.132(b)(2); 195.205(b)(2); 195.264(b)(1);195.264(e)(3); 195.307(b)
Reference added in 49 CFR 193.2101(b), 193.2321(b).
• API 650, ''Welded Steel Tanks for Oil Storage,'' (11th edition, June 2007, Addendum 1, 2008)
Replaces IBR: 10th edition, 1998 including Addenda 1–3;
Referenced in 49 CFR 195.132(b)(3); 195.205(b)(1); 195.264(b)(1); 195.264(e)(2); 195.307; 195.565; 195.579(d).
• ANSI/API Recommended Practice 651, ''Cathodic Protection of Aboveground Petroleum Storage Tanks'' (3rd edition, January 2007)
Replaces IBR: 2nd edition, December 1997;
Referenced in 49 CFR 195.565; 195.579(d).
• ANSI/API Recommended Practice 652, ''Lining of Aboveground Petroleum Storage Tank Bottoms,'' (3rd edition, October 2005)
Replaces IBR: 2nd edition, December 1997;
Referenced in 49 CFR 195.579(d).
• API 653, ''Tank Inspection, Repair, Alteration, and Reconstruction,'' (3rd edition, includes Addendum 1 (2003), Addendum 2 (2005), Addendum 3 (2008), and Errata (2008), April 2008)
Replaces IBR: 3rd edition, 2001 including Addendum 1, 2003;
Referenced in 49 CFR 195.205(b)(1); 195.432(b).
• API 1104, ''Welding of Pipelines and Related Facilities,'' (20th edition, Errata/Addendum, (2007) and Errata 2 (2008))
Replaces IBR: 19th edition, 1999, including Errata October 31, 2001;
Referenced in 49 CFR 192.225; 192.227(a); 192.229(c)(1); 192.241(c); Item II, Appendix B; 195.222; 195.228(b); 195.214(a).
• API 1130, ''Computational Pipeline Monitoring for Liquid Pipelines'' (1st edition, September 2007)
Replaces IBR: 2nd edition, 2002;
Referenced in 49 CFR 195.134; 195.444.
• API 2000, ''Venting Atmospheric and Low-Pressure Storage Tanks'' (5th edition, errata, November 1999)
Replaces IBR: 5th edition, April 1998;
Referenced in 49 CFR 195.264(e)(2); 195.264(e)(3).
• API Recommended Practice 2003, ''Protection against Ignitions Arising Out of Static, Lightning, and Stray Currents,'' (7th edition, January 2008)
Replaces IBR: 6th edition, 1998;
Referenced in 49 CFR 195.405(a).
• API 2026, ''Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service,'' (2nd edition, reaffirm, June 2006)
Replaces IBR: 2nd edition, 1998;
Referenced in 49 CFR 195.405(b).
• API Recommended Practice 2350 ''Overfill Protection for Storage Tanks in Petroleum Facilities,'' (3rd edition, January 2005)
Replaces IBR: 2nd edition, 1996;
Referenced in 49 CFR 195.428(c).

American Society of Civil Engineers (ASCE)

• ASCE/SEI 7–05, ''Minimum Design Loads for Buildings and Other Structures'' (2005 edition)
Replaces IBR: 2002 edition;
Referenced in 49 CFR 193.2067.

American Society for Testing and Materials (ASTM)

• ASTM A53/A53M–07 (2007), ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless''
Replaces IBR: 2004 edition;
Referenced in 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e).
• ASTM A106/106M–08 (2008), ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service''
Replaces IBR: 2004 edition;
Referenced in 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e).
• ASTM A372/A372M–03 (2008), ''Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels''
Replaces IBR: 2003 edition;
Referenced in 49 CFR 192.177(b)(1).
• ASTM A381–96 (Reapproved 2005), ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems''
Replaces IBR: 1996 edition, reapproved 2001;
Referenced in 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e).
• ASTM A671–06 (2006), ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures''
Replaces IBR: 2004 edition;
Referenced in 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e).
• ASTM A672–08 (2008), ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures''
Replaces IBR: 1996 edition, reapproved 2001;
Referenced in 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e).
• ASTM A691–98 (2007), ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures''
Replaces IBR: 1998 edition, reapproved 2002;
Referenced in 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e).

ASME International (ASME)

• ANSI/ASME B16.1–2005, Gray Iron Pipe Flanges and Flanged Fittings: Classes 25, 125, and 250 (August 2006)
Replaces IBR: ASME B16.1–1998 ''Cast Iron Pipe Flanges and Flanged Fittings'' 1998 edition;

Referenced in 49 CFR 192.147(c).

• ANSI/ASME B16.9–2007, ''Factory-Made Wrought Steel Butt Welding Fittings'' (December 2007)

Replaces IBR: 2003 edition (February 2004);

Referenced in 49 CFR 195.118(a).

• ANSI/ASME B31.4–2006 ''Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids'' (October 2006)

Replaces IBR: 2002 edition (October 2002);

Referenced in 49 CFR 195.452(h)(4)(i).

• ANSI/ASME B31.8–2007 ''Gas Transmission and Distribution Piping Systems'' (November 2007)

Replaces IBR: 2003 edition (February 2004);

Referenced in 49 CFR 192.619(a)(1)(i); 195.5(a)(1)(i); 195.406(a)(1)(i).

• ASME Boiler and Pressure Vessel Code, Section I: Rules for Construction of Power Boilers 2007 (July 2007)

Replaces IBR: 2004 edition, including addenda through July 1, 2005;

Referenced in 49 CFR 192.153(a).

• ASME Boiler and Pressure Vessel Code, Section VIII, Division 1: Rules for Construction of Pressure Vessels 2007 (July 2007)

Replaces IBR: 2004 edition, including addenda through July 1, 2005;

Referenced in 49 CFR 192.153(b); 192.165(b)(3); 193.2321; 195.307(e).

• ASME Boiler and Pressure Vessel Code, Section VIII, Division 2: Alternative Rules 2007 (July 2007)

Replaces IBR: 2004 edition, including addenda through July 1, 2005;

Referenced in 49 CFR 192.153(b); 192.165(b)(3); 193.2321; 195.307(e).

• ASME Boiler and Pressure Vessel Code, Section IX: Welding and Brazing Qualifications 2007 (July 2007)

Replaces IBR: 2004 edition, including addenda through July 1, 2005;

Referenced in 49 CFR 192.227(a); Item II, Appendix B to part 192; 195.222.

Gas Technology Institute (GTI)

• GTI–04/0032 LNGFIRE3: A Thermal Radiation Model for LNG Fires (2004)

Replaces IBR: GRI–89/0176 ''LNGFIRE: A Thermal Radiation Model for LNG Fires'' (June 29, 1990);

Referenced in 49 CFR 193.2057.

Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS)

• MSS SP–44–2006, ''Steel Pipe Line Flanges'' (January 2006)

Replaces IBR: 1996 edition, reaffirmed 2001;

Referenced in 49 CFR 192.147(a).

NACE International (NACE)

• NACE SP0169–2007, ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems''

Replaces IBR: NACE Standard RP0169–2002 ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems'';

Referenced in 49 CFR 195.571; 195.573.

• NACE SP0502–2008 Standard Practice—Pipeline External Corrosion Direct Assessment Methodology (Reaffirmed)

Replaces IBR: NACE Standard RP0502–2002 ''Pipeline External Corrosion Direct Assessment Methodology'';

Referenced in 49 CFR 192.923(b)(1); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(1)(ii); 192.925(b)(2) Introductory text; 192.925(b)(3) Introductory text; 192.925(b)(3)(ii); 192.925(b)(iv); 192.925(b)(4) Introductory text; 192.925(b)(4)(ii); 192.931(d); 192.935(b)(1)(iv); 192.939(a)(2); 195.588.

National Fire Protection Association (NFPA)

• NFPA 30 (2008), ''Flammable and Combustible Liquids Code''

Replaces IBR: 2003 edition;

Referenced in 49 CFR 192.735(b); 195.264(b)(1).

• NFPA 59A (2006), ''Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)

Partially Replaces IBR: 2001 edition;

Referenced in 49 CFR 193.2101(b); 193.2321(b).

• NFPA 70 (2008) ''National Electrical Code''

Replaces IBR: 2005 edition;

Referenced in 49 CFR 192.163(e); 192.189(c).

Plastics Pipe Institute, Inc. (PPI)

• PPI TR–3/2008 (2008), ''Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe''

Replaces IBR: 2004 edition;

Referenced in 49 CFR 192.121.

On April 14, 2009 (74 FR 17099), PHMSA published a Direct Final Rule that incorporated by reference the 2007 editions of API Specification 5L ''Specification for Line Pipe'' and API 1104 ''Welding of Pipelines and Related Facilities.'' That rulemaking did not eliminate the use of the currently referenced standards but simply allowed the additional use of these new standards. In this NPRM PHMSA is proposing to eliminate the use of the previous editions of these standards.

V. Clarifications, Corrections and Edits

This document proposes to revise the pipeline safety regulations to make, non-substantive edits, update contact information, and provide clarification as specified in the following section-by-section summary:

Part 192

Section 192.11

PHMSA is proposing to revise paragraph (c) in § 192.11 to require that Part 192 prevails if there is a conflict between Part 192 and NFPA 58 or 59 for the reasons discussed above in ''Updated Standards Not Incorporated by Reference.''

Section 192.711

• When the repair time conditions were implemented for Pipeline Integrity Management in High Consequence Areas (HCA), this section was not modified to clarify that the repair times for pipelines covered by § 192.711 pertained only to nonintegrity management repairs.

We are revising this section to make that clearer.

Gas Piping Technology Committee (GPTC) Petition

GPTC is an accredited American National Standards Institute (ANSI) standards committee that develops and publishes the ''Guide for Gas Transmission and Distribution Piping Systems'', and assists natural gas pipeline operators to comply with Part 192. PHMSA's Office of Pipeline Safety (OPS) is represented on this committee. PHMSA proposes to make the following amendments in response to a GPTC petition:

Sections 192.145(d) and 192.145(e)

• Section 192.145 specifies the design and installation requirements for valves. GPTC petition 89–04 requests that OPS clarify the intent of § 192.145(d) and (e) regarding the design requirements for pressure containing parts of valves used in compressor stations. OPS has several interpretations, PI–75–057 and PI–71–014, stating that the plug or ball is not a pressure containing part. It is OPS's intent to permit the use of cast iron plugs or balls in combination with steel shell components.

We are proposing to revise paragraphs (d) and (e) to use the same language as ANSI/ASME B31.8, paragraph 831.11(c) in referring to shell components. Proposed revisions to paragraph (d) will clarify the elements of a ''shell component.''

In response to GPTC's petition, we are also clarifying the materials allowed in certain valve components used in compressor stations. In paragraph (e), we are proposing to clarify that cast iron, malleable iron, or ductile iron may be used in the valve ball or plug. These materials may not be used in the pressure holding shell components (body, bonnet, cover, or end flange).

Section 192.3

• Section 192.3 defines terms used throughout Part 192. PHMSA proposes to move the definitions, ''active corrosion'', ''electrical survey'' and ''pipeline environment'' from § 192.465(e) to § 192.3. This proposed revision will provide a broader applicability of these terms to Part 192 because these terms are also found in Part 192, Subparts I and O.

Section 192.557

GPTC petition 95–17 requests OPS revise § 192.557(c) to allow the use of a previous pressure test as a basis for increasing the maximum allowable operating pressure (MAOP) of a steel pipeline that will produce a hoop stress less than 30 percent of SMYS and of plastic, cast iron, and ductile iron pipelines.

Regulations in Subpart K do not require a new pressure test be conducted at the time of uprating unless the old pressure test cannot justify the uprated pressure. Section 192.555 addresses uprating higher stress steel pipelines and § 192.557 addresses lower stress steel pipelines and plastic, cast iron, and ductile iron pipelines. Section 192.555(c) explicitly allows the use of a previous pressure test as the basis for establishing a higher MAOP. Since in § 192.555(c), we allow a previous pressure test at the higher level hoop stress, we intended to allow it at a lower hoop stress in steel pipelines and in plastic, cast iron, and ductile iron pipelines.

The confusion is with the requirement of § 192.553(d), which states that, ''* * * a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location''. Only the derating for class location as specified in § 192.619 is a requirement of section § 192.553(d) for pipelines being uprated under § 192.555(c). The intent is not to preclude the use of a previous pressure test as a basis for uprating. This requirement would also apply to steel pipelines of lower hoop stress and to plastic, cast iron, and ductile iron pipelines when the basis of uprating is a previous pressure test. PHMSA proposes to clarify requirements for MAOP uprating in § 192.557(c) by including the location factor requirements in § 192.619(a)(2).

Part 193

Section 193.2101

PHMSA is proposing to revise this regulation to incorporate by reference sections from the 2006 edition of NFPA59A pertaining to the seismic design of stationary LNG storage tanks. Other sections from the 2001 edition of NFPA 59A would continue to be incorporated by reference as designated in 193.2013. NFPA 59A (2006) incorporates by reference the 1990 edition of API 620 but PHMSA proposes to incorporate by reference the most recent version, API 620 (2008), for seismic design.

Section 193.2321

PHMSA is proposing to clarify the language in § 193.2321(a) and to use the broader terminology for non-destructive testing. PHMSA also proposes to revise 193.2321(b) to add new requirements in accordance with NFPA 59A's 2006 edition for the ultrasonic examination of LNG tank welds for storage tanks with an internal design pressure at or below 15 psig.

Part 195

Section 195.307

• PHMSA is proposing to revise paragraph (c) to reflect revised section numbering regarding pneumatic testing from 5.3 to 5.2 of API Standard 650.

Section 195.401

• When the repair time conditions were implemented for Pipeline Integrity Management in High Consequence Areas (HCA), this section was not modified to clarify that the repair times for pipelines covered by § 195.452 (pipelines that could affect an HCA) had to comply with the integrity management repair requirements in § 195.452(h). The requirement to repair a condition within a reasonable time period (unless an immediate hazard) applies to conditions on pipelines not covered by § 195.452.

We are revising this section to make those requirements clearer.

Section 195.432

PHMSA is proposing to revise paragraph (b) to eliminate the reference to section 4 in API Standard 653. All sections in API Standard 653 relating to inspection of in-service atmospheric and low-pressure steel aboveground breakout tanks are incorporated by reference.

Section 195.452

• PHMSA is proposing to revise paragraph (h)(4)(i) to reflect new section numbering as specified in the updated ANSI/ASME B31.4. The referenced section would be changed from ''451.7'' to ''451.6.2.2 (b)''.

VI. Rulemaking Analyses and Notices

Statutory/Legal Authority for This Rulemaking

This proposed rulemaking is published under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Section 60102(l) of the Federal Pipeline Safety Law states that the Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulations.

Privacy Act Statement

Anyone may search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted for an association, business, labor union,). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://docketsinfo.dot.gov/*.

Executive Order 13132

PHMSA has analyzed the proposed rulemaking according to the principles and criteria in Executive Order 13132 (''Federalism''). The proposed rule would not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The proposed rule would not impose substantial direct compliance costs on State and local governments. This proposed regulation would not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 would not apply.

Executive Order 12866—Regulatory Planning and Review and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, would not be subject to review by the Office of Management and Budget. This proposed rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

In this proposed rule we are updating references to standards that are incorporated in the pipeline safety regulations. These updates will enhance safety while reducing the compliance burden on the regulated industry. We are also clarifying language in some of the provisions to better reflect the intent of those regulations. Industry standards developed and adopted by consensus generally are accepted and followed by the industry; thus, their incorporation by reference in the Pipeline Safety Regulations assures that the industry is not forced to comply with a different set of standards to accomplish the same safety goal. In addition, several amendments proposed for adoption provide regulatory relief through compliance with certain nationally and internationally recognized standards such as the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and standards published by the ASTM International (ASTM) and the American Petroleum Institute (API). Requiring regulatory compliance with standards such as the ASME, ASTM and API takes advantage of established and well-defined and proven practices. Because we are proposing to adopt industry consensus standards we expect compliance costs associated with this proposal will be minimal.

Overall this proposed rule is intended to enhance transportation safety and reduce the overall compliance burden on the regulated industry. We invite public comment on any impacts of these proposed amendments

Executive Order 13175

PHMSA has analyzed this proposed rulemaking according to Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rulemaking would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 would not apply.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This proposed rule would ensure that pipeline operators are using the most current editions of technical standards incorporated by reference. The proposed rule would also improve the clarity of several regulations. PHMSA believes that this proposed rulemaking would impact a substantial number of small entities but that this impact will be negligible. Based on the facts available about the expected impact of this rulemaking, I certify, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities. PHMSA invites public comments on this certification.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million (adjusted for inflation currently estimated to be $141 million) or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the proposed rulemaking.

Paperwork Reduction Act

This proposed rule would not impose any new information collection requirements.

National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. 4321–4375) requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Counsel on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

PHMSA is proposing to incorporate by reference (IBR) into the pipeline safety regulations all or parts of new editions of voluntary consensus standards to allow pipeline operators to use current technology, new materials, and other industry and management practices. PHMSA also proposes to make non substantive edits and clarify regulatory language in certain provisions. These proposed amendments to the pipeline safety regulations would not require pipeline operators to undertake any significant new pipeline safety initiatives.

2. Alternatives

In developing the proposed rule, we considered two alternatives:

(1) Do nothing.

(2) Propose revisions to the Pipeline Safety Regulations to incorporate the newest editions of voluntary consensus standards to allow pipeline operators to use current technologies.

Alternative 1

Because our goal is to facilitate uniformity, compliance, commerce and safety in the transportation of hazardous liquids and gases by pipeline, we rejected this alternative.

Alternative 2

Many of the industry standards currently incorporated by reference have been revised and updated to incorporate new technology and methodology. Most of the amendments would allow for alternative means of compliance while still ensuring safety, clarify regulatory requirements, and make the regulatory provisions more consistent—all in furtherance of the safe transportation of hazardous materials by pipeline.

3. Analysis of Environmental Impacts

The Nation's pipelines are located throughout the United States, onshore and offshore, and traverse a variety of environments—from highly populated urban sites to remote, unpopulated rural areas.[1] . The pipeline infrastructure is a network of over 2 million miles of pipeline that moves millions of gallons of hazardous liquids and over 55 billion cubic feet of natural gas daily.[2] The biggest source of energy is petroleum, including oil and natural gas. Together, they supply 65 percent of the energy in the United States.[3]

The physical environment potentially affected by the proposed rule includes the airspace, water resources (e.g., oceans, streams, lakes), cultural and historical resources (e.g., properties

[1] PHMSA, Pipeline Basics, *http://primis.phmsa.dot.gov/comm/PipelineBasics.htm.*

[2] GAO/RCED–00–128, ''The Office of Pipeline Safety is Changing How it Oversees the Pipeline Industry.''

[3] PHMSA. Pipeline Safety Q&As.

listed on the National Register of Historic Places), biological and ecological resources (e.g., coastal zones, wetlands, plant and animal species and their habitat, forests, grasslands, offshore marine ecosystems), and special ecological resources (e.g., threatened and endangered plant and animal species and their habitat, national and State parklands, biological reserves, wild and scenic rivers) that exist directly adjacent to and within the vicinity of pipelines.

Because the pipelines subject to the rule contain hazardous materials, resources within the physically affected environment, as well as public health and safety, may be affected by gas pipeline incidents such as spills and leaks. Incidents on pipelines can result in fires and explosions, with resulting damage to the local environment. In addition, since pipelines often contain gas streams laden with condensates and natural gas liquids (NGL's), failures also result in spills of these liquids, which can cause environmental harm. Depending on the size of a spill or gas leak, and the nature of the impact zone, the environmental impacts could vary from property damage and environmental damage to injuries or, on rare occasions, fatalities.

Updating the references to industry standards enhances safety and environmental protection by recognizing the use of new technologies. Thus it is possible that, on a national scale, the cumulative environmental damage from pipelines is reduced, or at a minimum unchanged.

Neither the ''do nothing'' alternative or the action alternative would result in any significant impacts on the environment.

4. Consultations

Various industry associations and State regulatory agencies were consulted in the development of this proposed rulemaking

5. Decision About the Degree of Environmental Impact

PHMSA has preliminarily determined that the selected alternative would not have a significant impact on the human environment. PHMSA welcomes comment on any of these conclusions.

Executive Order 13211

Transporting gas affects the nation's available energy supply. However, this proposed rulemaking would not be a ''significant'' energy action under Executive Order 13211. It also would not be a significant regulatory action under Executive Order 12866 and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs would not be likely to identify this proposed rule as a significant energy action.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas, Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum pipeline safety.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR Parts 192, 193, and 195 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118 and 60137; and 49 CFR 1.53.

2. In § 192.3, add the following definitions for ''Active corrosion'', ''Electrical survey'', and ''Pipeline environment'' in appropriate alphabetical order as follows:

§ 192.3 Definitions.

* * * * *

Active corrosion means continuing corrosion that, unless controlled, could result in a condition that is detrimental to public safety.

* * * * *

Electrical survey means a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

* * * * *

Pipeline environment includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.

* * * * *

3. In § 192.7, revise paragraph (c)(2) to read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(c) * * *

(2) *Documents incorporated by reference.*

Source and name of referenced material	49 CFR reference
A. Pipeline Research Council International (PRCI):	
(1) AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,'' (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§§ 192.933(a)(1); 192.933(d)(1)(i); 192.485(c).
B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183, ''Specification for Line Pipe'' (44th edition, 2007), Includes Errata and Addendum (2009).	§§ 192.55(e); 192.113; Item I of Appendix B.
(2) API Recommended Practice 5L1, ''Recommended Practice for Railroad Transportation of Line Pipe'' (6th edition, 2002).	§ 192.65(a).
(3) API Recommended Practice 5LW, ''Recommended Practice for ''Transportation of Line Pipe on Barges and Marine Vessels'' (2nd edition, 1996).	§ 192.65(b).
(4) API Specification 6D/ISO 14313, ''Pipeline Valves'' (23rd edition and errata 1, 2 and 3, (2009).	§ 192.145(a)

Source and name of referenced material	49 CFR reference
(5) API Recommended Practice 80, ''Guidelines for the Definition of Onshore Gas Gathering Lines,'' (1st edition, April 2000).	§§ 192.8(a); 192.8(a)(1); 192.8(a)(2); 192.8(a)(3); 192.8(a)(4).192.8(a); 192.8(a)(1); 192.8(a)(2); 192.8(a)(3); 192.8(a)(4).
(6) API 1104, ''Welding of Pipelines and Related Facilities'' (20th edition, Errata/Addendum, (2007) and Errata 2 (2008)).	§§ 192.225; 192.227(a); 192.229(c)(1); 192.241(c); Item II, Appendix B.
(7) API Recommended Practice 1162, ''Public Awareness Programs for Pipeline Operators'' (1st edition, December 2003).	§§ 192.616(a); 192.616(b); 192.616(c).
C. American Society for Testing and Materials (ASTM):	
(1) ASTM A53/A53M–07, (2007), ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.''.	§§ 192.113; Item I, Appendix B.
(2) ASTM A106/A106M–08, (2008), ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service''.	§§ 192.113; Item I, Appendix B.
(3) ASTM A333/A333M–05 (2005) ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service''.	§§ 192.113; Item I, Appendix B.
(4) ASTM A372/A372M–03 (2008), ''Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels''.	§ 192.177(b)(1).
(5) ASTM A381–96 (Reapproved 2005), ''Standard Specification for Metal-Arc Welded Steel Pipe for Use With High-Pressure Transmission Systems''.	§§ 192.113; Item I, Appendix B.
(6) ASTM A671–06, (2006), ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures''.	§§ 192.113; Item I, Appendix B.
(7) ASTM A672–08, (2008), ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures''.	§§ 192.113; Item I, Appendix B.
(8) ASTM A691–98 (Reapproved 2007), ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures''.	§§ 192.113; Item I, Appendix B.
(9) ASTM D638–03, ''Standard Test Method for Tensile Properties of Plastics''.	§§ 192.283(a)(3); 192.283(b)(1).
(10) ASTM D2513–87, ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings''.	§ 192.63(a)(1).
(11) ASTM D2513–99, ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings''.	§§ 192.191(b); 192.281(b)(2); 192.283(a)(1)(i); Item 1, Appendix B.
(12) ASTM D2517–00, ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings''.	§§ 192.191(a); 192.281(d)(1); 192.283(a)(1)(ii); Item I, Appendix B.
(13) ASTM F1055–1998, ''Standard Specification for Electrofusion type Polyethylene Fittings for Outside Diameter Controller Polyethylene Pipe and Tubing''.	§ 192.283(a)(1)(iii).
D. ASME International (ASME):	
(1) ANSI/ASME B16.1–2005, Gray Iron Pipe Flanges and Flanged Fittings: Classes 25, 125, and 250.	§ 192.147(c).
(2) ANSI/ASME B16.5–2003, ''Pipe Flanges and Flanged Fittings 1998''.	§§ 192.147(a); 192.279.
(3) ANSI/ASME B31G–1991 (Reaffirmed; 2004), ''Manual for Determining the Remaining Strength of Corroded Pipelines''.	§§ 192.485(c); 192.933(a).
(4) ANSI/ASME B31.8–2007, (November 2007), ''Gas Transmission and Distribution Piping Systems''.	§ 192.619(a)(1)(i).
(5) ANSI/ASME B31.8S–2004, ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines''.	§§ 192.903(c); 192.907(b); 192.911, Introductory text; 192.911(i); 192.911(k); 192.911(l); 192.911(m); 192.913(a) Introductory text; 192.913(b)(1); 192.917(a) Introductory text; 192.917(b); 192.917(c); 192.917(e)(1); 192.917(e)(4); 192.921(a)(1); 192.923(b)(1); 192.923(b)(2); 192.923(b)(3); 192.925(b) Introductory text; 102.925(b)(1); 192.925(b)(2); 192.925(b)(3); 192.925(b)(4); 192.927(b); 192.927(c)(1)(i); 192.929(b)(1); 192.929(b)(2); 192.933(a); 192.933(d)(1); 192.933(d)(1)(i); 192.935(a); 192.935(b)(1)(iv); 192.937(c)(1); 192.939(a)(1)(i); 192.939(a)(1)(ii); 192.939(a)(3); 192.945(a).
(6) ASME Boiler and Pressure Vessel Code, Section I, ''Rules for Construction of Power Boilers'' (2007 edition).	§ 192.153(b).
(7) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels'' (2007 edition).	§§ 192.153(a); 192.153(b); 192.153(d); 192.165(b)(3).
(8) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Rules for Construction of Pressure Vessels'' (2007 edition).	§§ 192.153(b); 192.165(b)(3).
(9) ASME Boiler and Pressure Vessel Code, Section IX, ''Welding and Brazing Qualifications'' (2007 edition).	§§ 192.227(a); Item II, Appendix B.
E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP–44–2006 ''Steel Pipe Line Flanges''	§ 192.147(a).
(2) [Reserved]	
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 (2008), ''Flammable and Combustible Liquids Code''	§ 192.735(b).
(2) NFPA 58 (2004), ''Liquefied Petroleum Gas Code (LP-Gas Code)''.	§§ 192.11(a); 192.11(b); 192.11(c).

Source and name of referenced material	49 CFR reference
(3) NFPA 59 (2004), ''Utility LP-Gas Plant Code''	§§ 192.11(a); 192.11(b); 192.11(c).
(4) NFPA 70 (2008), ''National Electrical Code''	§§ 192.163(e); 192.189(c).
G. Plastics Pipe Institute, Inc. (PPI):	
(1) PPI TR–3/2008 (2008), ''Policies and Procedures for Developing. Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe''.	§ 192.121.
H. NACE International (NACE):	
(1) NACE Standard SP0502–2008, ''Pipeline External Corrosion Direct Assessment Methodology''.	§§ 192.923(b)(1); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(1)(ii); 192.925(b)(2) Introductory text; 192.925(b)(3) Introductory text; 192.925(b)(3)(ii); 192.925(b)(iv); 192.925(b)(4) Introductory text; 192.925(b)(4)(ii); 192.931(d); 192.935(b)(1)(iv); 192.939(a)(2).
I. Gas Technology Institute (GTI):	
(1) GRI 02/0057 (2002), ''Internal Corrosion Direct Assessment of Gas Transmission Pipelines Methodology''.	§ 192.927(c)(2).

4. In § 192.11, revise paragraph (c) to read as follows:

§ 192.11 Petroleum gas systems.

* * * * *

(c) If there is a conflict between this part and NFPA 58 or NFPA 59, this part prevails.

5. Section 192.65 is revised to read as follows:

§ 192.65 Transportation of pipe.

(a) *Railroad.* In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless:

(1) The transportation is performed in accordance with API RP 5L1 (incorporated by reference, *see* § 192.3).

(2) In the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Subpart J of this part to at least 1.25 times the maximum allowable operating pressure if it is to be installed in a class 1 location and to at least 1.5 times the maximum allowable operating pressure if it is to be installed in a class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Subpart J of this part, the test pressure must be maintained for at least 8 hours.

(b) *Ship or barge.* In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by ship or barge on both inland and marine waterways unless the transportation is performed in accordance with API RP 5LW.

§ 192.121 [Amended]

6. In § 192.121, under ''S='', remove the term ''PPI TR–3/2004'' and add, in its place, the term ''PPI TR–3/2008''.

7. In § 192.145, revise the first sentence in paragraph (d) introductory text and paragraph (e) to read as follows:

§ 192.145 Valves.

* * * * *

(d) No valve having shell (body, bonnet, cover, and/or end flange) components made of ductile iron may be used at pressures exceeding 80 percent of the pressure ratings for comparable steel valves at their listed temperature. * * *

* * * * *

(e) No valve having shell (body, bonnet, cover, and/or end flange) components made of cast iron, malleable iron, or ductile iron may be used in the gas pipe components of compressor stations.

8. In § 192.465, revise paragraph (e) to read as follows:

§ 192.465 External corrosion control: Monitoring.

* * * * *

(e) After the initial evaluation required by §§ 192.455(b) and (c) and 192.457(b), each operator must, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

9. In § 192.557, revise paragraph (c) to read as follows:

§ 192.557 Uprating: Steel pipelines to a pressure that will produce a hoop stress less than 30 percent of SMYS: plastic, cast iron, and ductile iron pipelines.

* * * * *

(c) Notwithstanding the requirements of § 192.619(a)(2), and after complying with paragraph (b) of this section, the increase in maximum allowable operating pressure (MAOP) must be made in increments that are equal to 10 psig (69 kPa) or 25 percent of the total pressure increase, whichever produces the fewer number of increments. Whenever the requirements of paragraph (b)(6) of this section apply, there must be at least two approximately equal incremental increases.

* * * * *

10. Section 192.711 is revised to read as follows:

§ 192.711 Transmission lines: General requirements for repair procedures.

(a) *Temporary repairs.* Each operator must take immediate temporary measures to protect the public whenever:

(1) A leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above 40 percent of the SMYS; and

(2) It is not feasible to make a permanent repair at the time of discovery.

(b) *Permanent repairs.* An operator must make permanent repairs on its pipeline system according to the following:

(1) Non integrity management repairs: The operator must make permanent repairs as soon as feasible.

(2) Integrity management repairs: When an operator discovers a condition

on a pipeline covered under Subpart O–Gas Transmission Pipeline Integrity Management, the operator must remediate the condition as prescribed by § 192.933(d).

(c) *Welded patch.* Except as provided in § 192.717(b)(3), no operator may use a welded patch as a means of repair.

§§ 192.923, 192.925, 192.931, 192.935, and 192.939 [Amended]

11. In 49 CFR part 192 remove the terms ''NACE RP0502–2002'' or ''NACE RP 0502–2002''and add, in their place, the terms ''NACE SP0502–2008'' in the following places:

a. Section 192.923(b)(1);

b. Section 192.925(b) Introductory text, (b)(1), (b)(1)(ii), (b)(2) Introductory text, (b)(3) Introductory text, (b)(3)(ii), (b)(iv), (b)(4) Introductory text, (b)(4)(ii);

c. Section 192.931(d);

d. Section 192.935(b)(1)(iv); and

e. Section 192.939(a)(2).

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

12. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

13. In § 193.2013, revise paragraph (c), to read as follows:

§ 193.2013 Incorporation by reference.

* * * * *

(c) Documents incorporated by reference.

Source and name of referenced material	49 CFR reference
A. American Gas Association (AGA):	
(1) ''Purging Principles and Practices'' (3rd edition, 2001)	§§ 193.2513; 193.2517; 193.2615.
B. American Petroleum Institute (API):	
(1) API 620 (2008), ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' (11th edition, 2008).	§§ 193.2101(b); 193.2321(b).
C. American Society of Civil Engineers (ASCE):	
(1) ASCE/SEI 7–05, ''Minimum Design Loads for Buildings and Other Structures'' (2005 edition).	§ 193.2067.
D. ASME International (ASME):	
(1) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels'' (2007 edition).	§§ 193.2321; 193.2321.
E. Gas Technology Institute (GTI) formerly the Gas Research Institute (GRI):	
(1) GTI–04/0032, ''LNGFIRE: A Thermal Radiation Model for LNG Fires''.	§ 193.2057(a).
(2) GTI–04/0049, ''LNG Vapor Dispersion Prediction with the DEGADIS Dense Gas Dispersion Model'' (April 2004).	§ 193.2059.
(3) GRI–96/0396.5, ''Evaluation of Mitigation Methods for Accidental LNG Releases, Volume 5: Using FEM3A for LNG Accident Consequence Analyses'' (April 1997).	§ 193.2059.
F. National Fire Protection Association (NFPA):	
(1) NFPA 59A, ''Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)'' (2001 edition).	§§ 193.2019; 193.2051; 193.2057; 193.2059; 193.2101(a); 193.2301; 193.2303; 193.2401; 193.2521; 193.2639; 193.2801.
(2) NFPA 59A, ''Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)'' (2006 edition).	§§ 193.2101(b); 193.2321(b).

14. In § 193.2057, revise paragraph (a) to read as follows:

§ 193.2057 Thermal radiation protection.

* * * * *

(a) The thermal radiation distances must be calculated using Gas Technology Institute's (GTI) report or computer model GTI–04/0032 LNGFIRE3: A Thermal Radiation Model for LNG Fires (incorporated by reference, *see* § 193.2013). The use of other alternate models which take into account the same physical factors and have been validated by experimental test data may be permitted subject to the Administrator's approval.

* * * * *

15. In § 193.2067, revise paragraph (b)(1) to read as follows:

§ 193.2067 Wind forces.

* * * * *

(b) * * *

(1) For shop fabricated containers of LNG or other hazardous fluids with a capacity of not more than 70,000 gallons, applicable wind load data in ASCE/SEI 7–05 (incorporated by reference, see § 193.2013).

* * * * *

16. Section 193.2101 is revised to read as follows:

§ 193.2101 Scope.

(a) Each LNG facility designed after March 31, 2000 must comply with requirements of this part and of NFPA 59A (2001) (incorporated by reference, *see* § 193.2013). If there is a conflict between this part and NFPA 59A, this part prevails. Unless otherwise specified, all references to NFPA 59A in this part are to the 2001 edition.

(b) Stationary LNG storage tanks must comply with section 7.2.2 of NFPA 59A (2006) (incorporated by reference, *see* § 193.2013) for seismic design of field fabricated tanks. All other LNG storage tanks must comply with API 620 (2008) (incorporated by reference, *see* § 193.2013) for seismic design.

17. Section 193.2321 is revised to read as follows:

§ 193.2321 Nondestructive tests.

(a) The butt welds in metal shells of storage tanks with internal design pressure above 15 psig must be non-destructively examined in accordance with the ASME Boiler and Pressure Vessel Code (Section VIII Division 1) (incorporated by reference, *see* § 193.2013), except that 100 percent of welds that are both longitudinal (or meridional) and circumferential (or latitudinal) of hydraulic load bearing shells with curved surfaces that are subject to cryogenic temperatures must be non-destructively examined in accordance with the ASME Boiler and Pressure Vessel Code (Section VIII Division 1).

(b) For storage tanks with internal design pressures at 15 psig or less,

ultrasonic examinations of welds on metal containers must comply with the following:

(1) Section 7.3.1.2 of NFPA 59A (2006) (incorporated by reference, *see* § 193.2013);

(2) Appendices Q and C of API 620 (2008) (incorporated by reference, *see* § 193.2013);

(c) Ultrasonic examination records must be retained for the life of the facility. If electronic records are kept, they must be retained in a manner so that they cannot be altered by any means; and

(d) The ultrasonic equipment used in the examination of welds must be calibrated at a frequency no longer than eight hours. Such calibrations must verify the examination of welds against a calibration standard. If the ultrasonic equipment is found to be out of calibration, all previous weld inspections that are suspect must be reexamined.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

18. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118 and 60137; and 49 CFR 1.53.

19. In § 195.3, revise paragraph (c) to read as follows:

§ 195.3 Incorporation by reference.

* * * * *

(c) The full titles of publications incorporated by reference wholly or partially in this part are as follows. Numbers in parentheses indicate applicable editions:

Source and name of referenced material	49 CFR reference
A. Pipeline Research Council International, Inc. (PRCI):	
(1) AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,'' (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§§ 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D); 195.587.
B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183, ''Specification for Line Pipe'' (44th edition, 2007), Includes Errata and Addendum (2009).	§§ 195.106(b)(1)(i); 195.106(e).
(2) API Recommended Practice 5L1, ''Recommended Practice for Railroad Transportation of Line Pipe'' (6th edition, 2002).	§ 195.207.
(3) API Recommended Practice 5LW, ''Recommended Practice for ''Transportation of Line Pipe on Barges and Marine Vessels'' (2nd edition, 1996).	§ 195.207.
(4) API Specification 6D/ISO 14313, ''Pipeline Valves'' (23rd edition and errata 1, 2, and 3,(2009).	§ 195.116(d).
(5) ANSI/API 12F, Errata for ''Specification for Shop Welded Tanks for Storage of Production Liquids'' (12th edition, 2007).	§§ 195.132(b)(1); 195.205(b)(2); 195.264(b)(1); 195.264(e)(1); 195.307(a); 195.565; 195.579(d).
(6) ANSI/API 510, ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration'' (9th edition, 2006).	§§ 195.205(b)(3); 195.432(c).
(7) API 620, ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' (11th edition, 2008, Addendum 1, 2009).	§§ 195.132(b)(2); 195.205(b)(2); 195.264(b)(1); 195.264(e)(3); 195.307(b).
(8) API 650, ''Welded Steel Tanks for Oil Storage'' (11th edition, 2007, Addendum, 2008).	§§ 195.132(b)(3); 195.205(b)(1); 195.264(b)(1); 195.264(e)(2); 195.307(c); 195.307(d); 195.565; 195.579(d).
(9) ANSI/API Recommended Practice 651, ''Cathodic Protection of Aboveground Petroleum Storage Tanks'' (3rd edition, January 2007).	§§ 195.565; 195.579(d).
(10) ANSI/API Recommended Practice 652, ''Lining of Aboveground Petroleum Storage Tank Bottoms'' (3rd edition, October 2005).	§ 195.579(d).
(11) API 653, ''Tank Inspection, Repair, Alteration, and Reconstruction'' (3rd edition Third Edition, Includes Addendum 1 (2003), Addendum 2 (2005), Addendum 3 (2008), and Errata (2008), April 2008).	§§ 195.205(b)(1); 195.432(b).
(12) API 1104, ''Welding of Pipelines and Related Facilities'' (20th edition, Errata/Addendum, (2007) and Errata 2 (2008)).	§§ 195.222; 195.228(b); 195.214(a).
(13) API 1130, ''Computational Pipeline Monitoring for Liquid Pipelines'' (1st edition, 2007).	§§ 195.134; 195.444.
(14) API 2000, ''Venting Atmospheric and Low-Pressure Storage Tanks'' (5th edition, errata, Nov. 1999).	§§ 195.264(e)(2); 195.264(e)(3).
(15) API Recommended Practice 2003, ''Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents'' (7th edition, 2008).	§ 195.405(a).
(16) API 2026, ''Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service'' (2nd edition with reaf, 2006).	§ 195.405(b).
(17) API Recommended Practice 2350, ''Overfill Protection for Storage Tanks In Petroleum Facilities''' (3rd edition, 2005).	§ 195.428(c).
(18) API 2510, ''Design and Construction of LPG Installations'' (8th edition, 2001).	§§ 195.132(b)(3); 195.205(b)(3); 195.264(b)(2); 195.264(e)(4); 195.307(e);195.428(c); 195.432(c).
(19) API Recommended Practice 1162, ''Public Awareness Programs for Pipeline Operators'' (1st edition, December 2003).	§§ 195.440(a); 195.440(b); 195.440(c).
C. ASME International (ASME):	

Source and name of referenced material	49 CFR reference
(1) ANSI/ASME B16.9–2007 (December 2007), ''Factory-Made Wrought Steel Butt Welding Fittings''.	§ 195.118(a).
(2) ANSI/ASME B31.4–2006) (October 2006), ''Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids''.	§ 195.452(h)(4)(i).
(3) ANSI/ASME B31G–1991 (Reaffirmed; 2004), ''Manual for Determining the Remaining Strength of Corroded Pipelines''.	§§ 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D).
(4) ANSI/ASME B31.8–2007 (November 2007), ''Gas Transmission and Distribution Piping Systems''.	§§ 195.5(a)(1)(i); 195.406(a)(1)(i).
(5) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels,'' (2007 edition, July 1, 2007).	§§ 195.124; 195.307(e).
(6) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Alternate Rules for Construction for Pressure Vessels'' (2007 edition, July 1, 2007).	§ 195.307(e).
(7) ASME Boiler and Pressure Vessel Code, Section IX, ''Welding and Brazing Qualifications,'' (2007 edition, July 1, 2007).	§ 195.222.
D. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP–75–2004, ''Specification for High Test Wrought Butt Welding Fittings'' (1993).	§ 195.118(a).
(2) [Reserved].	
E. American Society for Testing and Materials (ASTM):	
(1) ASTM A53/A53M–07 (2007), ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless''.	§ 195.106(e).
(2) ASTM A106/A106M–08 (2008), ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service''.	§ 195.106(e).
(3) ASTM A333/A 333M–05 (2004), ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service''.	§ 195.106(e).
(4) ASTM A381–96 (Reapproved 2005), ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems''.	§ 195.106(e).
(5) ASTM A671–06 (2006), ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures''.	§ 195.106(e).
(6) ASTM A672–08 (2008), ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures''.	§ 195.106(e).
(7) ASTM A691–98 (2007), ''Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures''.	§ 195.106(e).
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 (2008), ''Flammable and Combustible Liquids Code''	§ 195.264(b)(1).
(2) [Reserved].	
G. NACE International (NACE):	
(1) NACE Standard SP0169–2007, ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems''.	§§ 195.571; 195.573.
(2) NACE Standard SP0502–2008, ''Pipeline External Corrosion Direct Assessment Methodology''.	§ 195.588.

20. In § 195.116, revise paragraph (d) to read as follows:

§ 195.116 Valves.

* * * * *

(d) Each valve must be both hydrostatically shell tested and hydrostatically seat tested without leakage to at least the requirements set forth in section 11 of API Standard 6D (incorporated by reference, *see* § 195.3).

* * * * *

21. Add § 195.207 to subpart D to read as follows:

§ 195.207 Transportation of pipe.

(a) *Railroad.* In a pipeline operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless the transportation is performed in accordance with API RP 5L1 (incorporated by reference, *see* § 195.3).

(b) *Ship or barge.* In a pipeline operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by ship or barge on both inland and marine waterways, unless the transportation is performed in accordance with API RP 5LW (incorporated by reference, *see* § 195.3).

22. In § 195.307, revise paragraph (c) to read as follows:

§ 195.307 Pressure testing aboveground breakout tanks.

* * * * *

(c) For aboveground breakout tanks built to API Standard 650 and first placed in service after October 2, 2000, testing must be in accordance with section 5.2 of API Standard 650 (incorporated by reference, see § 195.3).

* * * * *

23. In § 195.401, paragraph (b) is revised to read as follows:

§ 195.401 General requirements.

* * * * *

(b) An operator must make repairs on its pipeline system according to the following requirements:

(1) *Non Integrity management repairs.* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

(2) *Integrity management repairs.* When an operator discovers a condition on a pipeline covered under § 195.452, the operator must correct the condition as prescribed in § 195.452 (h).

* * * * *

24. In § 195.432, paragraph (b) is revised to read as follows:

§ 195.432 Inspection of in-service breakout tanks.

* * * * *

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653 (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

* * * * *

25. In § 195.452, paragraphs (h)(4)(i) introductory text is revised to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

* * * * *

(h) * * *

(4) * * *

(i) *Immediate repair conditions.* An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in section 451.6.2.2(b) of ANSI/ASME B31.4 (incorporated by reference, see § 195.3). An operator must treat the following conditions as immediate repair conditions:

* * * * *

26. Section 195.571 is revised to read as follows:

§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?

Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

27. In § 195.573, paragraph (a)(2) is revised to read as follows:

§ 195.573 What must I do to monitor external corrosion control?

(a) * * *

(2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

* * * * *

28. In § 195.588, paragraphs (b)(1), (b)(2) introductory text, (b)(2)(iii), (b)(3) introductory text, (b)(4) introductory text, (b)(4)(ii), (b)(4)(iv), (b)(5) introductory text, and (b)(5)(ii) are revised to read as follows:

§ 195.588 What standards apply to direct assessment?

* * * * *

(b) * * *

(1) *General.* You must follow the requirements of NACE SP0502 (incorporated by reference, see § 195.3). Also, you must develop and implement an ECDA plan that includes procedures addressing pre-assessment, indirect examination, direct examination, and post-assessment.

(2) *Pre-assessment.* In addition to the requirements in Section 3 of NACE SP0502, the ECDA plan procedures for pre-assessment must include—

* * * * *

(iii) If you utilize an indirect inspection method not described in Appendix A of NACE SP0502, you must demonstrate the applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method.

(3) *Indirect examination.* In addition to the requirements in Section 4 of NACE SP0502, the procedures for indirect examination of the ECDA regions must include—

* * * * *

(4) *Direct examination.* In addition to the requirements in Section 5 of NACE SP0502, the procedures for direct examination of indications from the indirect examination must include—

* * * * *

(ii) Criteria for deciding what action should be taken if either:

(A) Corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE SP0502 provides guidance for criteria); or

(B) Root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE SP0502 provides guidance for criteria);

* * * * *

(iv) Criteria that describe how and on what basis you will reclassify and re-prioritize any of the provisions specified in Section 5.9 of NACE SP0502.

(5) *Post assessment and continuing evaluation.* In addition to the requirements in Section 6 of NACE SP 0502, the procedures for post assessment of the effectiveness of the ECDA process must include—

* * * * *

(ii) Criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the pipeline segment at an interval less than that specified in Sections 6.2 and 6.3 of NACE SP0502 (see appendix D of NACE SP0502).

29. In Appendix C to Part 195, paragraph (I)(A) introductory text is revised to read as follows:

Appendix C to Part 195—Guidance for Implementation of an Integrity Management Program

* * * * *

I. * * *

A. The rule defines a High Consequence Area as a high population area, an other populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping System (NPMS). An operator, or government official may access the data from the NPMS home page *http://www.npms.phmsa.dot.gov/.* OPS maintains the NPMS and may update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to § 195.452(d)(3)).

* * * * *

Issued in Washington, DC, on July 16, 2009.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E9–17307 Filed 7–21–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229, 234, 235, and 236

[Docket No. FRA–2008–0132, Notice No. 2]

RIN 2130–AC03

Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearing.

SUMMARY: By notice of proposed rulemaking (NPRM) published on July 21, 2009 ([CITE]), FRA proposed regulations implementing a requirement of the Rail Safety Improvement Act of 2008 that certain passenger and freight railroads install positive train control systems. The proposal includes required functionalities of the technology and the means by which it would be certified. The proposal also describes the contents of the positive train control implementation plans required by the statute and contains the proposed process for submission of those plans for review and approval by FRA. These proposed regulations could also be voluntarily complied with by entities not mandated to install positive train control systems. This document announces a public hearing being conducted in connection with this proceeding.

DATES: A public hearing will be held on August 13, 2009, from 9 a.m. to 6 p.m. at the location listed below to provide interested parties the opportunity to comment on the proposals contained in the NPRM.

ADDRESSES: (1) *Public Hearing.* A public hearing to provide interested parties the opportunity to comment on the proposals contained in the NPRM will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

(2) *Docket Clerk.* Written notification of a party's intent to provide oral testimony at the public hearing should identify the docket number and should be submitted to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Ave., SE., RCC–10, Stop 10, Washington, DC 20590 or fax to (202) 493–6068.

FOR FURTHER INFORMATION CONTACT: Thomas McFarlin, Office of Safety Assurance and Compliance, Staff Director, Signal & Train Control Division, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W35–332, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6203); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–217, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6032).

SUPPLEMENTARY INFORMATION: Interested parties are invited to present oral statements and proffer information and views 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 non-adversarial proceedings; therefore, there will be no cross examination of persons presenting statements or proffering evidence. An 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 the initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing. The purpose of the hearing is to receive oral comments regarding the specific provisions contained in the proposed rule. A transcript of the discussions will be made part of the public docket in this proceeding.

Public Participation Procedures. Any person wishing to participate in the public hearing should notify the Docket Clerk by mail or at the address or fax number provided in the **ADDRESSES** section at least five working days prior to the date of the hearing and submit three copies of the oral statement that he or she intends to make at the proceeding. The notification should identify the party the person represents, the particular subject(s) the person plans to address, and the time requested. The notification should also provide the Docket Clerk with the participant's mailing address and other contact information. FRA reserves the right to limit participation in the hearings of persons who fail to provide such notification. FRA reserves the right to limit the duration of presentations if necessary to afford all persons with the opportunity to speak.

Issued in Washington, DC, on July 17, 2009.

Jo Strang,

Associate Administrator for Railroad Safety/ Chief Safety Officer.

[FR Doc. E9–17391 Filed 7–21–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0039; MO 922105 0082–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the White-Sided Jackrabbit (*Lepus callotis*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding and initiation of status and critical habitat review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list the white-sided jackrabbit (Lepus callotis) as an endangered species and designate critical habitat under the Endangered Species Act of 1973, as amended. Following a review of the petition, we find the petition provides substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing this species is warranted. To ensure that the status review is comprehensive, we are requesting the public to submit scientific and commercial data and other information regarding the white-sided jackrabbit. We will make a determination on critical habitat if and when we initiate a listing action for this species.

DATES: We made the finding announced in this document on July 22, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before September 21, 2009.

ADDRESSES: You may submit information by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for docket FWS-R2-ES-2009-0039 and then follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R2-ES-2009-0039; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Information Requested** section below for more details).

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113; by telephone (505-346-2525) or by facsimile (505-346-2542). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Requested

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the status of the white-sided jackrabbit. We request information from the public, other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the white-sided jackrabbit. We are seeking information regarding:

(1) The historical and current status and distribution of the white-sided jackrabbit, its biology and ecology, and ongoing conservation measures for the species and its habitat in the United States and Mexico; and

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting the species' continued existence and threats to it or its habitat.

If we determine that listing the white-sided jackrabbit is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the white-sided jackrabbit, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the white-sided jackrabbit that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat should be proposed for designation if the species is proposed for listing, and why that proposed habitat meets the requirements of the Act.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a review of the status of the species.

On October 15, 2008, we received a petition dated October 9, 2008, from the WildEarth Guardians requesting that the white-sided jackrabbit (*Lepus callotis*) (jackrabbit) be listed as threatened or endangered under the Act. The petitioner requested that we evaluate three potentially listable entities of the jackrabbit: (1) the northern population of the subspecies *L. callotis gaillardia* as a distinct population segment (DPS); (2) the full species *L. callotis* throughout its range; and (3) each of the subspecies of the jackrabbit, which they identified as *L. callotis gaillardia* and *L. callotis callotis*. Additionally, the petition requested that critical habitat be designated concurrent with listing of *L. callotis*, its subspecies, and the northern DPS. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a November 26, 2008, letter to the petitioner, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. In that letter, we advised the petitioner that, to the maximum extent practicable, we would address the petition within 90 days. During our review of the petition, we found that the majority of information cited in the petition was not readily available to us. Therefore, on January 13, 2009, we requested that the petitioner provide references. On February 13, 2009, the petitioner provided references. We received a 60–day notice of intent to sue from the petitioner dated January 28, 2009, and on April 15, 2009, the petitioner brought a lawsuit against us for failure to make a decision on the Petition within 90 days of its receipt.

Previous Federal Actions

The white-sided jackrabbit was first listed as a candidate (Category 2) for Federal listing as either a threatened or endangered species under the Act, in the 1982 Candidate Notice of Review (47 FR 58454, December 30, 1982). Category 2 status included those taxa for which information in the Service's possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In the Candidate Notice of Review published on February 28, 1996, we announced a revised list of animal and plant taxa that were regarded as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants (61 FR 7595). The revised candidate list included only former Category 1 species. All former Category 2 species were dropped from the list to reduce confusion about the conservation status of these species, and to clarify that the Service no longer regarded these species as candidates for listing. Because the white-sided jackrabbit was a Category 2 species, it was no longer recognized as a candidate species.

Species Information

The white-sided jackrabbit is one of four species of hares (Family Leporidae) occurring in New Mexico, including the black-tailed jackrabbit (*Lepus californicus*), which co-occurs with the white-sided jackrabbit (Findley *et al.* 1975). The white-sided jackrabbit can be distinguished from the black-tailed jackrabbit by its extensive white sides and inconspicuous or absent black ear tips (Findley *et al.* 1975, pp. 92, 96; Best and Henry 1993, p. 1).

One of the primary issues presented by the petitioner is related to the taxonomy of the jackrabbit. The petitioner presents information that morphological and genetic data have caused some to question the uniqueness of the subspecies *Lepus callotis callotis* and the subspecies *L. callotis gaillardi* (e.g., InfoNatura 2008). They request that we consider each recognized subspecies for listing, if we find them to be taxonomically valid. Under section 3(16) of the Act, we may consider for listing any species or subspecies of fish, wildlife, or plants, or any distinct population segment of vertebrate fish or wildlife which interbreeds when mature. Thus, in our 12–month finding, should we determine that the species as a whole does not warrant listing, we will evaluate whether any valid subspecies warrants listing. If we conclude that the subspecies *L. callotis gaillardia* is valid, but does not warrant listing, we will consider whether the northern populations of the subspecies is a valid DPS under our policy (61 FR 4722, February 7, 1996) and, if so, whether it warrants listing. If we conclude that the subspecies *L. callotis gaillardia* is not valid, we will consider whether the northern populations of the full species is a valid DPS and, if so, whether it warrants listing.

The core distribution of the white-sided jackrabbit lies within Mexico (New Mexico Department of Game and Fish (NMDGF) 2006, p. 114). The species historically occurred from southern New Mexico to northern Oaxaca, Mexico, within two distinct geographic areas (Best and Henry 1993, p. 2). One area was located in the southern Animas and Playas valleys of Hidalgo County, south to west-central Chihuahua and north-central Durango, Mexico (Bednarz and Cook 1984, p. 358; Reynolds 1988, p. 1). The other area was from central Durango south across the open plains of the Mexican Plateau to the State of Oaxaca, Mexico (Hall 1981, p. 330). The geographic separation of the two areas occurs on either side of the Rio Nazas, Durango, Mexico; that river marks the dividing line for many subspecies of mammals (Peterson 1976, pp. 496-498). The jackrabbit's range in New Mexico was restricted to about 121 square kilometers (47 square miles) (Bednarz 1977, p. 6; Bednarz and Cook 1984, p. 359). We are unaware of any similar estimate for Mexico. There is no recent information on the amount of habitat occupied by the jackrabbit in either country. Moreover, the white-sided jackrabbit has not been confirmed as extant in Arizona (Cahalane 1939, p. 436), although in 1954, Hoffmeister and Goodpaster reportedly observed what they believed to be white-sided jackrabbits along the west base of the Huachuca Mountains, Cochise County, Arizona (Hoffmeister 1986). Therefore, New Mexico is the only confirmed place in the United States where the species has been documented to occur.

This species is highly elusive. It inhabits predominately well-developed open grasslands that have low shrub density and level terrain, avoiding hills or mountains (Bednarz and Cook 1984, p. 359; Cook 1986, p. 15; Desmond 2004, p. 416). It was reported only a few times after the species was discovered in 1892 along the International Border between the United States and Mexico (Mearns 1895). For example, two animals were collected in the Playas Valley in 1931 and one animal was collected in the Animas Valley in 1974 (Anderson and Gaunt 1962; Bogan and Jones 1975, p. 47; Bednarz 1977, p. 1).

The petitioner provides information indicating that white-sided jackrabbit populations are declining (Bednarz and Cook 1984, p. 360; Mehlhop 1995, pp. 3-10; Traphagen 2002, pp. 4-5). The information in our files is consistent with the population numbers reported in the petition. We judge the information regarding a possible decline in jackrabbit numbers to be substantial and reliable. In 1976, the white-sided jackrabbit was found in New Mexico only in the Animas Valley on the Diamond A Ranch (the Diamond A Ranch includes the lands formerly called Gray Ranch in southwestern New Mexico) and in limited parts of the southern Playas Valley east of the Diamond A Ranch in southern Hidalgo County (Bednarz 1977, pp. 4-5). During investigations conducted between May and August 1976, Bednarz (1977) speculated that the number of white-sided jackrabbits in the Animas Valley was between 250 to 300 individuals. Five years later, surveys in New Mexico revealed that white-sided jackrabbit sightings had decreased to approximately half of the mean reported by Bednarz (Bednarz and Cook 1984, pp. 359-360). The jackrabbit may now be extirpated from the Playas Valley; no observations of the species have been made in this area during recent surveys (Traphagen 2002, p. 5; Frey 2004, p. 22; NMDGF 2006, p. 115). Surveys in Chihuahua, Mexico, also reported low densities of white-sided jackrabbits (Desmond 2004, p. 417). We are unaware of any additional information on population abundance, or any year-round or long-term monitoring data on the white-sided jackrabbit in either the United States or Mexico (see also NMDGF 1997, p. 3). As such, the status of this species remains unclear in both countries.

In the white-sided jackrabbit, females are generally larger than males (Bednarz 1977, pp. 13, 15). In New Mexico, white-sided jackrabbits are observed almost unvaryingly in pairs (Bednarz 1977, p. 9), suggesting that mated animals remain together on a long-term basis. Pair bonds may serve to ensure adequate reproduction, in the context of generally low population density (Bednarz 1977, p. 12). The members of the pair are usually near each other and run together when approached by intruders (Bednarz 1977). Several litters are probably produced each year, with litter size appearing to average 2.2 young (Bednarz 1977). The young tend to have a soft, woolly coat in early life and attain sexual maturity at a rapid rate.

In the United States portion of its range, the white-sided jackrabbit appears to be found only in association with grasslands (Bednarz 1977, p. 6). Plants commonly found in areas inhabited by this species in the Animas and Playa valleys of New Mexico include *Bouteloua gracilis* (blue grama), *B. eriopoda* (black grama), *Hilaria mutica* (tobosa), *Buchloe dactyloides* (buffalo grass), *Lycurus phleoides* (wolftail), *Muhlenbergia torreyi* (ring muhly), *Cyperus* spp. (flatsedges), *Gutierrezia sarothrae* (snakeweed), *Yucca elata* (soaptree yucca), and *Prosopis glandulosa* (honey mesquite) (Bednarz and Cook 1984, pp. 358-359; Mehlhop 1995, p. 15; Moore-Craig 1992, p. 4). More than 97 percent of all observations of this species have been in pure grasslands and less than 3 percent in grasslands with varying amounts of forbs (flowering herbs) and shrubs (Bednarz and Cook, 1984). In New Mexico, white-sided jackrabbits feed primarily on *B. gracilis, B.dactyloides*, *B. eripoda, L. phleoides*, and *M. torreyi* (Bednarz 1977, pp. 14, 16).

Although the white-sided jackrabbit shares its range with the black-tailed jackrabbit, the two generally occupy different habitats, with white-sided jackrabbit found in areas of pure grassland and the black-tailed generally found in areas dominated by shrubs (Bednarz 1977, p. 17; Bednarz and Cook 1984, p. 359-360; Desmond 2004, p. 417).

The white-sided jackrabbit constructs and uses forms (scrapes or depressions in the ground). Forms provide jackrabbits with concealment and protection. The form is usually located in clumps of grass and surrounded by dense stands of *Hilaria mutica* (Bednarz 1977, p. 16). Daytime observations of white-sided jackrabbits are uncommon, as the species is primarily nocturnal (Bednarz 1977, pp. 6-11; Best and Henry 1993, p. 5). Although many species of jackrabbit and hare are considered pests because they may damage crops, fields, and orchards, the white-sided jackrabbit is not known to depredate crops.

Five-Factor Evaluation

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations in the Code of federal Regulations (CFR) at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information on threats to the white-sided jackrabbit, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition asserts that current and historic grazing practices and suppression of wildfire threaten the jackrabbit because they have led to shrub encroachment into grasslands. The petitioner correctly asserts that the jackrabbit is found only in association with well-developed, high-elevation (greater than 1,460 meters (4,800 feet)) Chihuahuan desert grasslands, characterized by flat topography and few shrubs and forbs (Bednarz 1977). Moreover, the petitioner claims that declines in grassland health, indicated by increases in shrub and forb cover, cause populations of white-sided jackrabbit to decrease while populations of black-tailed jackrabbit increase. The petitioner states that this change in grassland vegetation is especially apparent in the Playas Valley, Hidalgo County, where the white-sided jackrabbit may have been recently extirpated (Traphagen 2002, pp. 5, 11; NMDGF 2006, p. 4). The petitioner indicates that little is known about the specific habitat associations of the white-sided jackrabbit in Mexico, but it appears to also inhabit high-elevation grassland similar to that used by the species in New Mexico.

The NMDGF's 2006 biennial review of State threatened and endangered species identifies the loss and degradation of grassland habitat through drought, shrub encroachment, and changes in grass composition as the primary threat to the white-sided jackrabbit in New Mexico (NMDGF 2006, p. 115). Numerous sources substantiate that past range-management practices have contributed to the degradation of desert grasslands or their conversion to shrublands (National Museum of Natural History 2008, p. 1; Bednarz and Cook 1984, p. 360; Desmond 2004, p. 417; NatureServe 2008, p. 2; USDA Forest Service 2007, p. 15; Service 2008, p. 53). Bednarz and Cook (1984, p. 360) postulated that numbers of white-sided jackrabbit had decreased in New Mexico as the density and vigor of grasses declined, while black-tailed jackrabbits and desert cottontail (*Sylvilagus audubonii*) numbers increased in response to an increase in woody shrubs. Desmond (2004, p. 417) reported a similar pattern from Chihuahua, Mexico, where she found that increased shrub encroachment into grasslands negatively affected populations of white-sided jackrabbits (Desmond 2004, p. 417). It is likely that the increase in shrub cover has occurred through a combination of fire suppression policies, drought, and intense livestock grazing during the late 1800s and early 1900s, which were the key causes of the replacement of grasslands by shrublands (Malpai Borderlands Habitat Conservation Plan Technical Working Group 2008, p. 18; Traphagen 2002, p. 12).

Citing Brown (1994), the petition asserts that the primary cause of loss and degradation of grasslands in the Chihuahuan Desert is overgrazing by cattle. Overgrazed grassland is susceptible to invasion by shrubs and forbs, a cover type which greatly favors the black-tailed jackrabbit (Baker 1977, pp. 222-223; Bednarz and Cook 1984, pp. 359-360; Desmond 2004, p. 417; Moore-Craig 1992, p. 13; NMDGF 2006, p. 115). Areas where white-sided jackrabbits historically or currently occur have been continuously grazed for over a century (Traphagen 2002). We will explore overgrazing more thoroughly in our 12–month finding for the jackrabbit.

The petitioner claims that wildfire suppression is a cause of grassland degradation. We have information in our files to substantiate that fire exclusion has led to encroachment of shrubs into the grassland habitat of the white-sided jackrabbit. For example, Humphrey (1958, p. 245) believed fires were the controlling factor that kept shrubs from invading the desert grasslands in southeastern Arizona and southwestern New Mexico. The Bureau of Land management (BLM) came to a similar conclusion for the region of southwestern New Mexico where the white-sided jackrabbit historically occurred (BLM 2009, pp. 1-3). Alternatively, Valone *et al.* (2002, p. 563) reported that two fires in 5 years did not result in high levels of mortality to woody shrubs such as *Prosopis glandulosa* (mesquite) on the Diamond A Ranch, Hidalgo County, which is within the range of the jackrabbit. Based on this information, we find that the petition and other readily available

information in our files support the claim that fire exclusion may have led to the degradation of grasslands inhabited by the jackrabbit.

Evaluation of Information Provided in the Petition and Available in Service Files

We have evaluated the petition and readily available information in our files and find substantial information indicating that listing the species throughout its range may be warranted due to the present or threatened destruction, modification, or curtailment of the habitat or range of the white-sided jackrabbit. We find that substantial information was presented that shrub encroachment into grassland fostered by current and historic grazing practices, drought, and fire exclusion may threaten the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner identifies hunting of the white-sided jackrabbit for sport and food as an ongoing threat to the species. The petition reports that the species has been commercially hunted in Mexico and is considered a non-game species that is hunted in New Mexico, and thus is not protected by State game laws. Matson and Baker (1986, p. 41) indicated that the species was heavily hunted and considered highly edible. Reynolds (1988) also reported that white-sided jackrabbits were commonly hunted in some of the grasslands of Mexico. The species was historically hunted for commercial markets in Mexico (Leopold 1959, p. 349). Thus, hunting may have played a role in the decline of the white-sided jackrabbit in Mexico (Moore-Craig, 1992, p. 13). While all of the citations in the petition that document that the species was hunted in Mexico are over 20 years old, we do not have information indicating that hunting of the jackrabbit in Mexico has ceased. However, information in our files indicates that the species is not currently hunted in New Mexico. The white-sided jackrabbit is currently protected under the New Mexico Wildlife Conservation Act and may not be hunted (NMDGF 2008, p. 10). The petitioner does not detail ongoing or future impacts to the species from hunting in the United States.

The petition claims that the white-sided jackrabbit is currently subject to animal damage control programs, and cites the NMDGF in saying that some white-sided jackrabbits are known to have been killed by gunners and trappers. The NMDGF (1985, p. 2) stated that some white-sided jackrabbits have been lost to ''gunners and trappers,'' but provided no further information. This may be referring to Federal or State animal damage control agents. We have information in our files that the U.S. Department of Agriculture (USDA) reported that jackrabbits (*Lepus* spp.) have been taken in New Mexico as part of their animal damage control program (USDA APHIS 1994, Appendix H, pp. 18-19). The petitioner does not describe current or future plans for lethal control of any white-sided jackrabbits or quantify the amount that may have taken place historically through either the USDA or the general public. Therefore, neither information in our files nor the literature cited by the petition supports the petitioner's claim that the white-sided jackrabbit is currently subject to animal damage control programs by methods such as trapping or shooting, or is likely to be in the future.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition provides substantial information that hunting of the white-sided jackrabbit has been, and may continue to be, a threat to its populations in Mexico. Therefore, we find that the petition presents substantial information indicating that the petitioned action may be warranted due to overutilization.

C. Disease or Predation

The petitioner cites Bednarz (1977) in indicating that a lung infection has been observed in white-sided jackrabbits, but no serious diseases were noticed. Moore-Craig (1992, p. 11) noted that the infections found by Bednarz (1977) were all of a minor nature, and the overall health of the jackrabbit population appeared to be fair to good. Tularemia, a common disease among black-tailed jackrabbits, has not been found in the white-sided jackrabbit (Moore-Craig 1992, p. 11). The petition also notes that a wide variety of predators exists in the southern Animas Valley, New Mexico. It is likely that predation occurs on white-sided jackrabbits, since native predators occur within the range of both subspecies. However, the petitioner provided no data to support predation as an impact to populations of the jackrabbit.

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files indicating that the petitioned action may be warranted due to disease or predation. Therefore, we find that the petition does not provide substantial information that listing the white-sided jackrabbit due to disease or predation may be warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

The petitioner asserts that existing regulatory mechanisms do not provide any protections for the species and have been ineffective in mitigating many of the threats. The petitioner states that the species' ranking in NatureServe is G3 (vulnerable) and its National and State Status rankings are N1S1 (critically imperiled). Its status under the International Union for Conservation of Nature and Natural Resources is near threatened. We reviewed these designations and find the petitioner's claims to be accurate. However, these lists are not regulatory mechanisms; they serve only to notify the public of the species' status; no conservation or management actions are required; no regulatory authority for species conservation is established through these listings.

The petitioner states that the Malpai Borderlands Habitat Conservation Plan (MBHCP) does not reliably assure protection to the jackrabbit on private lands in New Mexico. The apparent basis of this position is that the Service willingly issued an incidental take permit on private lands to the Malpai Borderlands Group for the MBHCP. The petitioner also contends, based upon observed degradation of grassland habitat and declines in the jackrabbit population, that the Malpai Borderlands Group is not fulfilling its stated mission to restore and maintain natural processes that support diverse and flourishing animal life in the borderlands region, which includes the Diamond A Ranch in southern Hidalgo County, and is within the range of the white-sided jackrabbit in the United States. The petition does not provide information that documents the extent, magnitude, or immediacy of the perceived inadequacies of the MBHCP or how they threaten the white-sided jackrabbit in New Mexico.

The white-sided jackrabbit was listed as threatened by the State of New Mexico on January 24, 1975. This designation provides the protection of the New Mexico Wildlife Conservation Act, which prohibits direct take of the species except under issuance of a scientific collecting permit. However, this only conveys protection from collection or intentional harm.

Although the State of New Mexico statutes require the NMDGF to develop a recovery plan that will restore and maintain habitat for the species, the

species does not have a finalized recovery plan, conservation plan, or conservation agreement (NMDGF 2006a, p. 430). As such, existing State of New Mexico regulatory mechanisms are currently inadequate to protect the jackrabbit. As discussed above under Factor A, we find that the petition presents substantial evidence of threats to the species from grassland degradation, and we thus find that the petition presents substantial evidence that the inadequacy of existing regulatory mechanisms to prevent further grassland degradation or to recover grasslands may threaten the white-sided jackrabbit as well.

The white-sided jackrabbit is on the Regional Forester's Sensitive Species List for the Coronado National Forest (USDA Forest Service 2007, p. 15). However, we found no information in our files to substantiate that the jackrabbit is present on any public lands in New Mexico. Moreover, the petition asserts that the jackrabbit is only found on private lands in New Mexico. If the species is found on National Forest System lands, the US Forest Service (USFS) is required to analyze the impacts any proposed actions may have on the jackrabbit in all applicable National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) documents. On April 21, 2008, a new USFS planning rule (73 FR 21468) was made final. The USFS's new planning rule indicated that once a USFS land and resource management plan has been revised, the sensitive species designation will no longer be needed because species of concern (listed, proposed, or candidate species under the Act) or species of interest will replace them. Since the occurrence of the jackrabbit on the Coronado National Forest is uncertain, the petition and information in our files do not contain substantial information that the jackrabbit is faced with current and future threats on Forest Service lands.

Evaluation of Information Provided in the Petition and Available in Service Files

Neither the petition nor our files provide information about existing regulatory mechanisms for the species in Mexico, which contains the majority of the current range of the white-sided jackrabbit. As such, we have no information that the lack of regulatory mechanisms in Mexico is affecting the continued existence of the white-sided jackrabbit. We intend to assess this factor more thoroughly during our status review of the species.

As noted above, the jackrabbit receives no protection from the NatureServe or International Union for Conservation of Nature and Natural Resources designations, as these lists serve only to notify the public of the species' status rather than requiring any conservation or management actions; these listings do not impact either adequacy or inadequacy of regulatory mechanisms, since they are not regulatory in nature.

The petitioner does provide substantial information that the white-sided jackrabbit's status as a State-listed threatened species in New Mexico confers little regulatory protection (except against direct take). Therefore, we find that the petition presents substantial information that the petitioned action may be warranted due to the inadequacy of existing mechanisms in the United States.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition cites non-point source habitat change as a threat to the jackrabbit, suggesting that no single factor (e.g., grazing, fire suppression, shifting rainfall patterns, or increased atmospheric carbon dioxide levels) has led to the encroachment of shrubs into the grasslands. We find the information cited to be generic in nature and not specific to the white-sided jackrabbit or its habitat beyond the discussion under Factor A above.

The petitioner states that climate change and drought threaten the white-sided jackrabbit under Factor E. The petitioner cites a variety of sources in the body of the petition to support the claim regarding climate change and drought and their relation to the persistence of the jackrabbit, but did not provide any of these to us. Much of this information is not readily available to us. There is uncertainty over how climate change will affect the jackrabbit and its habitat. The petition claims that climate change will likely cause a deterioration of grassland habitat in New Mexico and the Chihuahuan Desert region. Further, the petitioner asserts that information indicates that the impact of drought and climate change have been implicated as influencing shrub encroachment into grasslands. Information readily available to us supports the petitioner's assertion that climate change might contribute to more frequent and intense drought within the U.S. and northern Mexico portion of the range of the jackrabbit (Seager *et al.* 2007, pp. 1181-1182). We will review the possible effects of climate change on the white-sided jackrabbit more thoroughly in our status review.

The petitioner reports a case of a New Mexico rancher finding several dead white-sided jackrabbits while eradicating mustard plants. Bednarz (1977) suggests that this mortality may have been caused by the jackrabbits' consumption of mustard plants and ensuing nitrate poisoning. Consumption of mustard plants is known to cause nitrate poisoning in cattle, and Bednarz (1977, p. 18) cites it as likely having the same effect on jackrabbits. No other information or support was provided by the petition, nor is there any information readily available to us that provides substantial information that food poisoning threatens the jackrabbit now or in the foreseeable future. The potential for jackrabbit mortality due to food poisoning merits further investigation during our status review of the species.

The petition asserts that road-killed white-sided jackrabbits have been found in the past. Nevertheless, the petition does not claim this is a threat to the species. Moore-Craig (1992, p. 16) found that occasionally white-sided jackrabbits are killed by vehicles. Traphagen (2009, p. 1) also noted that white-sided jackrabbits have been reported road-killed recently, likely from an increased presence of Border Patrol vehicles in New Mexico. Bednarz (1977, p. 18) reported that, even though fieldworkers were constantly looking for road-killed white-sided jackrabbits during a study, the species was rarely observed on the roads and tended to avoid approaching vehicles. The NMDGF (1997, p. 4) found that impacts from this type of mortality are unknown, but probably do not represent a significant threat to the species. Based on this review, the petition and information readily available to us do not provide any substantial information to support that vehicle collisions represent a threat to the white-sided jackrabbit currently or in the foreseeable future.

The petition notes that Smith (1999, p. 1) observed a white-sided jackrabbit's behavior in response to an approaching wildfire, but does not claim this is a threat to the species. The petitioner does not present specific information that the wildfire Smith (1999) observed resulted in losses of the white-sided jackrabbit. We acknowledge that the active fire management program in the Malpai Borderlands area may affect the white-sided jackrabbit. Effects during fire management may include mortality or injury of individuals as a result of direct exposure to fire, smoke inhalation, and crushing by the tires or tracks of vehicles used in fire management activities (Service 2008, pp. 64-65). We

believe that the jackrabbit is capable of surviving such fire effects by running away (Service 2008, p. 64). We find prescribed burns may also expose white-sided jackrabbits to higher rates of predation, but also allow for easier detection of terrestrial predators (Service 2008, p. 65). The effects of a prescribed burn would likely be short-term, because the fire-adapted grassland community usually responds quickly, with plant species showing regrowth within several days post-fire. Nevertheless, a reduction of shrubs would benefit the white-sided jackrabbit by improving grassland habitat. Although the MBHCP will likely result in short-term adverse effects to the jackrabbit, the long-term effects will improve the grassland community used by white-sided jackrabbits by reducing the shrub component, providing additional suitable habitat, and improving the area around occupied habitat for potential expansion; thus, implementation of the MBHCP, including the fire management program, should promote the conservation of the white-sided jackrabbit. For these reasons, we found no data or substantial information to indicate that wildfires or prescribed burns threaten white-sided jackrabbits or their habitat.

Evaluation of Information Provided in the Petition and Available in Service Files

We reviewed the petition, supporting information, and the information readily available to the Service and find the petition does not present any additional substantial information that any natural or manmade factors other than those discussed above for Factors A, B, and D may affect the white-sided jackrabbit's continued existence.

Finding

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90–day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). We have reviewed the petition and the available literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petition. As described in our Five-Factor Evaluation, above, the petition presents substantial information indicating that listing the white-sided jackrabbit throughout its entire range may be warranted based on Factor A (present or threatened destruction, modification, or curtailment of the species' habitat or range), Factor B (overutilization for commercial, recreational, scientific or educational purposes), and Factor D (inadequacy of existing regulatory mechanisms). Based on our Five-Factor Evaluation (above), the petition does not present substantial information indicating that Factor C (disease or predation) or Factor E (other natural or manmade factors affecting the species' continued existence) is currently, or in the future will be, a threat to the white-sided jackrabbit.

Based on this review and evaluation, we find that the petition has presented substantial scientific or commercial information that listing the jackrabbit throughout all of its range may be warranted due to current and future threats under Factors A, B, and D. We also find that the petition presented substantial information that the northern populations of the species may be a valid DPS and may warrant listing. Therefore, we are initiating a status review to determine whether listing the jackrabbit under the Act is warranted. As part of our status review, we will examine whether the full species, subspecies, or the petitioned northern DPS of the jackrabbit warrants listing under the Act. We will issue a 12–month finding as to whether any of the petitioned actions is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the jackrabbit.

The ''substantial information'' standard for a 90–day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12–month finding as to whether a petitioned action is warranted. A 90–day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a positive 90–day finding does not mean that the 12–month finding also will be positive.

The petitioner requested that critical habitat be designated for this species. If we determine in our 12–month finding that listing the jackrabbit is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 14, 2009.

James J. Slack,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. E9–17449 Filed 7–21–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 21 and 22

[FWS–R9–MB–2009–0002; 91200–1231–9BPP]

RIN 1018–AW44

Migratory Bird Permits; Changes in the Regulations Governing Falconry

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on October 8, 2008, to revise our regulations governing falconry in the United States.

With this action, we propose to make several changes to those regulations to correct inconsistencies and oversights and make the regulations clearer. Because a few of our changes are technically substantive, we are opening a comment period for this action.

DATES: We must receive any comments by August 21, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2009–0002; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

We will not accept e-mail or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that the final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (*see* **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of our previous actions concerning this subject by mail (*see* **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov.*

I. Background

On October 8, 2008, we published a final rule in the **Federal Register** (73 FR 59448) to revise our regulations governing falconry in the United States. We eliminated the requirement for a Federal permit to practice falconry, and made other changes to make it easier to understand the requirements for the practice of falconry, including take of raptors from the wild, and the procedures for obtaining a falconry permit. The rule also added a provision allowing us to approve falconry regulations that Indian Tribes, States, or U.S. territories adopt. This final rule became effective November 7, 2008, and changed the Code of Federal Regulations (CFR) at 50 CFR parts 21 and 22.

We have received questions about some parts of the final rule, which we propose to clarify or correct. Because a few of our proposed changes are technically substantive, we are opening a comment period for this action.

II. Corrections

We propose to better define the term ''imprint'' in 50 CFR 21.3 by changing the definition to mean a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it is fully feathered.

Since publishing the rule, we have received inquiries about the prohibition in 50 CFR 21.29(c)(3)(i)(E) on possession of captive-bred raptors by Apprentice falconers. We continue to disallow possession of eagles and of raptor species on the most recent national list of bird species of conservation concern (currently *Birds of Conservation Concern 2008,* U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Arlington, Virginia). However, captive-bred individuals of some of the prohibited species may be appropriate for Apprentice falconers. We failed to clearly prohibit possession of wild raptors of threatened or endangered species. We propose to revise paragraph (c)(3)(i)(E) to clarify this issue for the public and to clarify that an Apprentice falconer may have a hybrid raptor of most species.

In § 21.29(c)(3)(ii)(C), we stated that to advance to the level of General Falconer, an Apprentice Falconer must ''have practiced falconry with wild raptor(s) at the Apprentice Falconer level or equivalent for at least 2 years, including maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each year.'' However, because apprentices need not use wild raptors to advance to the General Falconer level, we propose to remove the word ''wild'' from this requirement. Likewise, we would correct § 21.29(g)(5)(ii), to make the requirements listed match those in § 21.29(c)(3)(ii)(C). Finally, for the same reason, we would remove the word ''wild'' from § 21.29(d)(1)(ii)(A).

In § (c)(7)(i), we by replace the words ''in lieu of a'' with the words ''in addition to the'' in the second sentence. The four species named in that paragraph must be banded with a nonreusable band that we will provide to the State, Tribe, or territory.

In § 21.29(d)(1)(ii)(A)(*4*), we stated in our regulations for housing falconry raptors that ''[e]ach raptor must have a pan of clean water available.'' In cold weather conditions and with some perch types, this requirement is impractical, and potentially harmful. We propose to change the requirement to clarify that, if practical, a water pan should be made available for a falconry bird.

In an oversight, the regulations at § 21.29(e)(3)(ii) state that General or Master falconers ''may take raptors less than 1 year of age from the wild during any period or periods specified by the State, Tribe, or territory.'' This constraint was not put in place for Apprentice falconers, so we wish to add the relevant language to the regulations, at § 21.29(e)(3)(i).

Since the final rule was published, we have been asked about the use of falconry birds in demonstrating or advertising falconry-related items such as hoods and telemetry equipment. We propose to add a sentence to § 21.29(f)(9)(i) clarifying that filming, photography, or illustration of falconry birds to demonstrate or advertise falconry equipment is acceptable.

Finally, we make several small word changes or additions to make these regulations compliant with other regulations. We also correct paragraph designations for several subparagraphs by indicating that the designations should have published in italics to conform with style requirements of the Office of the Federal Register, which requires that paragraph designations in the CFR follow this order: (a), (1), (i), (A), (*1*), and (*i*). Because several of the other proposed changes are substantive,

we request public comment on this proposed rule.

III. Required Determinations

Clarity of This Regulation

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the rule clearly stated?
2. Does the rule contain technical language or jargon that interferes with its clarity?
3. Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?
4. Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol § and a numbered heading; for example: ''§ 21.29 Falconry standards and falconry permitting.'')
5. Does the description of the rule in the Supplementary Information section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov.*

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities because the changes we are proposing are intended primarily to clarify and correct small problems with the published regulations.

Consequently, we certify that because this proposed rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. There are no costs to permittees or any other part of the economy associated with these regulations changes.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry affects small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Though States may have to revise their falconry regulations to comply with the proposed revisions, nearly every State already has falconry regulations in place. Therefore, revisions of the State regulations should not be significant.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from the regulation of falconry. However, this rule provides the opportunity for States to cooperate in management of falconry permits and to ease the permitting process for permit applicants.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this rule under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned OMB control number 1018–0022, which expires November 30, 2010. This regulation change does not add to the approved information collection. Information from the collection is used to document take of raptors from the wild for use in falconry and to document transfers of raptors held for

falconry between permittees. A Federal 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.

National Environmental Policy Act

We evaluated the environmental impacts of the significant changes to these regulations, and determined that the clarifications and corrections in this rule do not have any environmental impacts. Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, we determined that these regulatory changes do not have a significant effect on the human environment.

Under the guidance in Appendix 1 of the Department of the Interior Manual at 516 DM 2, we conclude that the regulatory changes are categorically excluded because they ''have no or minor potential environmental impact'' (516 DM 2, Appendix 1A(1)). No more comprehensive NEPA analysis of the regulations change is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with Tribes' ability to manage themselves or their funds or to regulate falconry on Tribal lands.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Proposed Action

The changes we propose are primarily in the combining, reorganizing, and rewriting of the regulations. The environmental impacts of this action are limited.

Socioeconomic. We do not expect the proposed action to have discernible socioeconomic impacts.

Raptor populations. This rule will not change the effects of falconry on raptor populations.

Endangered and Threatened Species. This proposed rule has language additions or changes that clarify protections for endangered and threatened species. The rule does not itself make any changes to those protections.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). These regulatory corrections and clarifications would not affect threatened or endangered species or their habitats in the United States.

List of Subjects

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend part 21 of subpart C, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

§ 21.3 [Amended]

2. Amend § 21.3 in the definition of the term ''Imprint'' by removing the words ''has fledged'' and adding in their place the words ''is fully feathered.''

§ 21.29 [Amended]

3. Amend § 21.29 as follows:

a. Redesignate paragraphs (c)(3)(i)(C)(1), (2), and (3) as paragraphs (c)(3)(i)(C)(*1*), (*2*), and (*3*);

b. Revise paragraph (c)(3)(i)(E) to read as set forth below;

c. Amend paragraph (c)(3)(ii)(C) by removing the word ''wild'' from the first sentence;

d. Amend paragraphs (c)(3)(iii)(C) and (c)(3)(iv)(B) by adding the words ''for use in falconry'' at the end of both paragraphs;

e. Redesignate paragraphs (c)(3)(iv)(A)(1) and (2) as paragraphs (c)(3)(iv)(A)(*1*) and (*2*);

f. Amend paragraph (c)(7)(i) by adding the words ''or from another falconer'' after the word ''rehabilitator'' in the first sentence;

g. Amend paragraph (c)(7)(i) in the second sentence by removing the words ''in lieu of a'' and adding the words ''in addition to the'' in their place;

h. Amend paragraph (d)(1)(ii)(A) by removing the word ''wild'';

i. Redesignate paragraphs (d)(1)(ii)(A)(1), (2), (3), and (4) as paragraphs (d)(1)(ii)(A)(*1*), (*2*), (*3*), and (*4*) and revise paragraph (d)(1)(ii)(A)(*4*) to read as set forth below;

j. Redesignate paragraphs (d)(1)(ii)(B)(1) and (2) as paragraphs (d)(1)(ii)(B)(*1*) and (*2*) and paragraphs (d)(1)(ii)(D)(1), (2), and (3) as paragraphs (d)(1)(ii)(D)(*1*), (*2*), and (*3*);

k. Amend paragraph (e)(1)(v) by adding the words ''or wildlife'' after the word ''livestock'' in both places where it occurs;

l. Revise paragraph (e)(3)(i) to read as set forth below;

m. Amend paragraphs (e)(3)(iii), (e)(3)(iii)(A), and (e)(3)(iii)(B) by adding the words ''or wildlife'' after the word ''livestock'' wherever it occurs;

n. Redesignate paragraphs (e)(3)(vi)(C)(1) and (2) as paragraphs (e)(3)(vi)(C)(*1*) and (*2*);

o. Revise paragraph (f)(9)(ii) to read as set forth below; and

p. Amend paragraph (g)(5)(ii) by removing the words ''taken from the wild'' and ''an average of 6 months per year, with.''

§ 21.29 Falconry standards and falconry permitting.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) You may possess a raptor of any Falconiform or Strigiform species except a Federally listed threatened or endangered species, a bald eagle (*Haliaeetus leucocephalus*), a white-tailed eagle (*Haliaeetus albicilla*), a

Steller's sea-eagle (*Haliaeetus pelagicus*), or a Golden eagle (*Aquila chrysaetos*), including wild, captive-bred, or hybrid individuals of these species.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) * * *

(*4*) In most cases, each raptor should have a pan of clean water available. However, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.

* * * * *

(e) * * *

(3) * * *

(i) If you are an Apprentice Falconer, you may take raptors less than 1 year of age from the wild during any period or periods specified by the State, Tribe, or territory. You may take any species from the wild except any listed as a national Species of Conservation Concern in the most recent list of ''Birds of Conservation Concern'' from the Division of Migratory Bird Management, a bald eagle (*Haliaeetus leucocephalus*), a white-tailed eagle (*Haliaeetus albicilla*), a Steller's sea-eagle (*Haliaeetus pelagicus*), a Golden eagle (*Aquila chrysaetos*), or a Federally listed threatened or endangered species.

* * * * *

(f) * * *

(9) * * *

(ii) You may not use falconry raptors for entertainment; for advertisements; as a representation of any business, company, corporation, or other organization; or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

* * * * *

PART 22—EAGLE PERMITS

4. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

§ 22.24 [Amended]

5. Amend § 22.24(b) by adding the words ''or wildlife'' after the word ''livestock'' in both places where it occurs.

Dated: June 16, 2009.

Jane Lyder,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–16922 Filed 7–21–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 74, No. 139

Wednesday, July 22, 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

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension of a currently approved information collection in support of the Intermediary Relending Program (IRP).

DATES: Comments on this notice must be received by July 22, 2009, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Lori Washington, Specialty Programs Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Avenue, SW., Washington, DC 20250–3225, Telephone (202) 720–9815, e-mail *lori.washington@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Intermediary Relending Program.

OMB Number: 0570–0021.

Expiration Date of Approval: December 31, 2009.

Type of Request: Extension of currently approved collection information.

Abstract: The regulations contain various requirements for information from the intermediaries, and some requirements may cause the intermediary to seek information from ultimate recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to identify the intermediary; describe the intermediary's experience and expertise; describe how the intermediary will operate its revolving loan fund; provide for debt instruments, loan agreements, and security; and other material necessary for prudent credit decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.5 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated Number of Respondents: 202.

Estimated Number of Responses per Respondent: 12.

Estimated Number of Responses: 2,383.

Estimated Total Annual Burden on Respondents: 17,959 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of 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. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue, SW., STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 9, 2009.

Judith A. Canalas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–17345 Filed 7–21–09; 8:45 am]

BILLING CODE 3410–XY–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Friday, July 24, 2009, 11 a.m.–1 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. E9–17491 Filed 7–20–09; 11:15 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Joseph Shuler at (202) 482–1293 or Yasmin Nair at (202) 482–3813; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2009, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China, covering the period December 1, 2007 through November 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 5821 (February 2, 2009). The current deadline for the preliminary results of this administrative review is September 2, 2009.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

The Department requires additional time to review and analyze the sales and cost responses in this administrative review. The Department has also found the need to issue additional supplemental questionnaires to respondents in this review. Moreover, the Department requires additional time to analyze complex issues related to surrogate value selections. Thus, it is not practicable to complete this review within the originally anticipated time limit (*i.e.,* by September 2, 2009). Therefore, the Department is extending the time limit for completion of the preliminary results by 104 days to not later than December 15, 2009, in accordance with section 751(a)(3)(A) of the Act.

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

Dated: *July 14, 2009.*

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–17424 Filed 7–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Joseph Shuler at (202) 482–1293 or Shane Subler at (202) 482–0189; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 2008, the Department published a notice of initiation of administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea, covering the period November 1, 2007 through October 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 73 FR 79055 (December 24, 2008). The current deadline for the preliminary results of this administrative review is August 2, 2009.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

The Department requires additional time to review and analyze the sales and cost responses in this administrative review. In particular, one of the respondents in this case has never participated in an antidumping case with the Department, and we need additional time to review its sales and cost methodologies. Thus, it is not practicable to complete this review within the originally anticipated time limit (*i.e.,* by August 2, 2009). Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to not later than November 30, 2009, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) of the Act.

Dated: July 14, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–17423 Filed 7–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–893, A–552–802

Certain Frozen Warmwater Shrimp from the People's Republic of China and the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Third Administrative Reviews

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

EFFECTIVE DATE: July 22, 2009.

FOR FURTHER INFORMATION CONTACT: Paul Walker (China) and Irene Gorelik (Vietnam), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W.,

Washington, DC 20230; telephone (202) 482–0413 and (202) 482–6905, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2009, the Department of Commerce (''Department'') published notices for the preliminary results of the administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp from the People's Republic of China (''PRC'') and the Socialist Republic of Vietnam (''Vietnam''), covering the period February 1, 2007, through January 31, 2008. *See Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 10026 (March 9, 2009); and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Request for Revocation, in Part, of the Third Administrative Review*, 74 FR 10009 (March 9, 2009). On June 4, 2009, the Department published a notice extending the deadline for the final results of certain frozen warmwater shrimp from PRC and Vietnam. *See Certain Frozen Warmwater Shrimp from the People's Republic of China and the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Third Administrative Reviews*, 74 FR 26839 (June 4, 2009). The final results for these administrative reviews are currently due no later than July 28, 2009.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires that the Department 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. On June 4, 2009, the Department extended the deadline of the final results by 21 days. Thus, the Department may extend the deadline of the final results by an additional 39 days. With respect to shrimp from Vietnam, the Department requires additional time to properly consider the numerous and complex issues raised by interested parties in their case briefs and rebuttal briefs in addition to considering arguments from the public hearing held on June 4, 2009 and the separate–rate status for numerous non–mandatory companies. With respect to shrimp from the PRC, the Department requires additional time to consider the numerous and complex issues raised in case briefs and rebuttal briefs from multiple interested parties, including surrogate country selection and surrogate values for several factors of production.

Thus, it is not practicable to complete these reviews within the extended time limit of 21 days. Therefore, the Department is again extending the time limit for completion of the final results of these reviews by 31 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than August 28, 2009.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and

777(i)(1) of the Act.

Dated: July 14, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–17304 Filed 7–21–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2009]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 17, 2009.

The grantee's proposed service area under the ASF would be the Texas counties of Dallas, Tarrant, Kaufman, Collin, Grayson, and Denton. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Dallas/Fort Worth Customs and Border Protection port of entry.

FTZ 39 was approved on August 17, 1978 (Board Order 133, 43 FR 37478, 8/23/78), and expanded on: December 11, 1992 (Board Order 613, 57 FR 61046, 12/23/92); December 27, 1994 (Board Order 723, 60 FR 2377, 1/9/95); December 27, 1994 (Board Order 724, 60 FR 2376, 1/9/95); March 12, 1999 (Board Order 1028, 64 FR 14212, 3/24/99); March 29, 2002 (Board Order 1213, 67 FR 17049, 4/9/02); and February 27, 2008 (Board Order 1542, 73 FR 13531–13532, 3/13/08). The applicant is requesting to include its current sites in the reorganized zone as ''magnet'' sites. The applicant proposes that Site 1 be exempt from ''sunset'' time limits that otherwise apply to sites under the ASF. No usage-driven sites are being proposed at this time. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 39's authorized subzones.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 21, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 5, 2009).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Kathleen Boyce at *Kathleen_Boyce@ita.doc.gov* or 202–482–1346.

Dated: July 17, 2009.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. E9–17425 Filed 7–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 28–2009]

Foreign-Trade Zone 260—Lubbock, TX; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Lubbock, Texas, grantee of FTZ 260, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 15, 2009.

The grantee's proposed service area under the ASF would be Garza, Hale, Hockley, Lubbock and Terry Counties, Texas. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Lubbock Customs and Border Protection port of entry.

FTZ 260 was approved by the FTZ Board on January 14, 2004 (Board Order 1315, 69 FR 3876, 1/27/04). The applicant is requesting to include the following current sites in the reorganized zone as ''magnet'' sites: *Proposed Site 1* (693 acres)-Lubbock International Airport, 5401 N. Martin Luther King, Jr. Blvd., Lubbock; and *Proposed Site 2* (1700 acres)-Reese Technology Center, 9801 Reese Blvd., Lubbock. The applicant proposes that Site 1 be exempt from ''sunset'' time limits that otherwise apply to sites under the ASF. The applicant is also requesting approval of the following initial ''usage-driven'' sites: *Proposed Site 3* (1.4 acres)—Holiday LiteSource, 301 Southeast Loop 289, Lubbock; and *Proposed Site 4* (5.3 acres)—J&B Industrial Services, Inc., 529 N.E. Loop 289, Lubbock.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 21, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 5, 2009).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen_Boyce@ita.doc.gov* or 202–482–1346.

Dated: July 15, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–17426 Filed 7–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Virginia, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 09–029. *Applicant:* University of Virginia, Charlottesville, VA 22908. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 74 FR 30046, June 24, 2009.

Docket Number: 09–030. *Applicant:* University of Texas at El Paso, El Paso, TX 79968. *Instrument:* Electron Microscope. *Manufacturer:* Hitachi High-Technologies Corporation, Japan. *Intended Use:* See notice at 74 FR 30046, June 24, 2009.

Docket Number: 09–031. *Applicant:* University of Toledo, Toledo, OH 43606. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 74 FR 30046, June 24, 2009.

Docket Number: 09–033. *Applicant:* Case Western Reserve University, Cleveland, OH 44106. *Instrument:* Electron Microscope. *Manufacturer:* FEI, the Netherlands. *Intended Use:* See notice at 74 FR 30046, June 24, 2009.

Docket Number: 09–036. *Applicant:* University of Texas Health Science Center at Houston, Houston, TX 77030. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 74 FR 30046, June 24, 2009.

Docket Number: 09–037. *Applicant:* National Institutes of Health, Hamilton, MT 59840. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 74 FR 30046, June 24, 2009.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: July 16, 2009.

Christopher Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–17422 Filed 7–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ37

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee (Committee), in August, 2009, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, August 6, 2009 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360, telephone: (508) 747–4900; fax: (508) 747–8937.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council's Research Steering Committee will meet to review final reports associated with cooperative research projects that have been conducted in the New England region. Approximately 12 projects will be reviewed with respect to their applicability to management decision-making. They cover a range of topics including habitat, social science, and fishing gear selectivity in the red crab, sea scallop and dogfish fisheries. Results of the RSC's review session will be reported to the full Council at it's September meeting in Plymouth, MA.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 16, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17300 Filed 7–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A(32c)–10–2009]

Foreign-Trade Zone 7—Mayaguez, PR; Scope Clarification Request; IPR Pharmaceuticals, Inc. (Pharmaceuticals)

A request for clarification of scope has been submitted to the Foreign-Trade Zones Board (the Board) by IPR Pharmaceuticals, Inc. (IPR), operator of IPR's pharmaceuticals manufacturing operations within FTZ 7, in Canovanas, Puerto Rico.

Manufacturing authority for pharmaceuticals and intermediates at IPR's FTZ 7 manufacturing facilities was issued on December 14, 2001 (Board Order 1203, 67 FR 71934, 12/03/2002). IPR listed in the original application specific component/product manufacturing which would be performed at the outset and also listed categories of components and products which might be sourced from abroad in the future. IPR has now informed the Board that future production will involve the use of an imported ingredient that was not specifically listed as a foreign-sourced component in the original manufacturing request. The company intends to use a foreign-sourced active ingredient, AZD0530 difumarate (HTSUS 2934.99.3000—6.5%), in production of difumarate tablets (HTSUS 3004.90.9115—duty-free).

The FTZ staff invites the comments of interested parties for consideration in its review. Submissions shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is August 21, 2009.

A copy of the request will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Diane Finver at *Diane_Finver@ita.doc.gov,* or (202) 482–1367.

Dated: July 16, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–17427 Filed 7–21–09; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, July 23, 2009, 2 p.m.

PLACE: Room 410, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 14, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–17258 Filed 7–21–09; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056]

Federal Acquisition Regulation; Information Collection; Report of Shipment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review

and approve an extension of a currently approved information collection requirement concerning Report of Shipment.

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 September 21, 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. 9000–0056, Report of Shipment, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Division, GSA, (202) 501–4082.

A. Purpose

Military and, as required, civilian agency storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

Respondents: 250.
Responses per Respondent: 4.
Annual Responses: 1,000.
Hours per Response: .167.
Total Burden Hours: 167.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: July 16, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–17494 Filed 7–21–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB) Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, the following meeting of the Defense Health Board (DHB) is announced:

DATES:

August 17–18, 2009

August 17, 2009

8:45 a.m.–12:30 p.m. (Open Session)
12 p.m.–1:45 p.m. (Administrative Working Meeting)
1:45 p.m.–5:30 p.m. (Open Session)

August 18, 2009

7 a.m.–2 p.m. (Administrative Working Meeting)

ADDRESSES: United States Air Force Academy, Falcon Club, Colorado Springs, CO.

FOR FURTHER INFORMATION CONTACT: Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, Ext. 1228, Fax: (703) 681–3317, *edmond.feeks@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.* The public is encouraged to register for the meeting. If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by August 3, 2009. Written statements may be mailed to the above address, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

Purpose of the Meeting: The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

Agenda: On August 17, 2009, the Board will receive briefings on Afghanistan Health Sector Overview, Combat Medicine, and ''Jack's Hack''. The following Defense Health Board Subcommittees will present updates to the Board: Pandemic Influenza Preparedness Subpanel, Millennium Cohort Study, Panel on the Care of Individuals with Amputation and Functional Limb Loss, Health Care Delivery External Advisory Subcommittee, Trauma and Injury Subcommittee, Psychological Health External Advisory Subcommittee, and the Warren Serum Repository.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Defense Health Board meeting from 8:45 a.m. to 12:30 p.m. and from 1:45 p.m. to 5:30 p.m. on August 17–18, 2009 is open to the public. Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer at the address detailed above at any point. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: July 15, 2009.

Morgan E. Frazier,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17296 Filed 7–21–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0107]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Information Systems Agency is deleting a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 21, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices 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 Defense Information Systems Agency is proposing to delete a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 16, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

KEUR.02

DISA Form 605, Personnel Data Sheet (February 22, 1993, 58 FR 10562).

Reason: System form is no longer in DISA publication inventory and therefore should not be maintained. All information previously retained in the DISA Form 605 is currently maintained under KEUR 010, Personnel File (February 22, 1993, 58 FR 10562).

[FR Doc. E9–17297 Filed 7–21–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed: Supercritical Pulverized Coal/Biomass Steam Power Electric Generation Facility in Non-Tidal Wetlands in Surry County, VA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Corps will prepare an Environmental Impact Statement to evaluate project alternatives and the public interest review factors for the proposed supercritical pulverized coal/biomass steam power electric generation facility.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS can be answered by: Melissa Nash, U.S. Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia 23510 (757) 201–7489.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* Old Dominion Electric Cooperative (ODEC) proposes to construct the Cypress Creek Power Station, a supercritical pulverized coal/biomass steam power electric generation facility that will meet the future energy needs of ODEC7s consumer-members in Virginia. ODEC is a not-for-profit wholesale power supplier to eleven (11) locally owned and controlled electric distribution cooperatives. ODEC will be seeking a permit to construct the facility with a generating capacity of 1,500 MW. ODEC has identified a 1,600-acre site is Surry County, Virginia as their preferred location and a 1,200 acre site in Sussex County, Virginia as their alternative site. Construction of the proposed project at either location will require water supply and discharge lines; railroad infrastructure for fuel delivery; upgrades and interconnection to nearby electric transmission lines; and highway improvements to meet facility traffic requirements.

2. *Alternatives:* Alternatives which will be investigated include, but will not be limited to, other sites, alternate onsite layouts, other fuel sources, renewable resources, energy conservation measures, a combination of alternatives, and the no project alternative.

3. *Scoping Process:* A pre-application scoping meeting was held with State and Federal agencies on June 3, 2009 and formal scoping comments were requested by June 26, 2009. The significant issues identified thus far include potential impacts to Federally listed threatened and/or endangered species, other wildlife, historic resources, non-tidal wetlands, air quality and water quality.

4. *Public Scoping Meeting:* Initial public scoping meetings were held on June 10 and 11, 2009 and comments have been received from the public. The Corps will use the comments received to assist in identifying the significant issues, which should be addressed in the DEIS.

5. *DEIS Availability:* The Corps estimates that the DEIS will be available to the public for review and comment in the summer of 2010.

Dated: July 15, 2009.

Andrew W. Backus,

Colonel, Corps of Engineers Commanding.

[FR Doc. E9–17369 Filed 7–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before August 21, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 16, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Evaluation of Moving High-Performing Teachers To Low-Performing Schools.

Frequency: On Occasion.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 495.
Burden Hours: 560.

Abstract: This is the second submission of a two-stage clearance request for approval of data collection activities that will be used to support An Impact Evaluation of Moving High-Performing Teachers to Low-Performing Schools. The evaluation aims to estimate the impact of a program, labeled the Talent Transfer Initiative (TTI) program, on student achievement. This program identifies teachers with consistently high performance using value-added student learning gains and offers them monetary incentives to transfer to schools identified as low-performing based on average student test scores.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4024. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–17390 Filed 7–21–09; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 21, 2009.

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

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 16, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: State Fiscal Stabilization Fund Grant Application.

Frequency: Once.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.
Burden Hours: 305.

Abstract: On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (ARRA) became law. A major part of ARRA is the new State Fiscal Stabilization Fund (Stabilization) program. The program provides $53,600,000,000 to States to keep teachers in the classroom, prevent the cutting of valuable education programs, and help mitigate college tuition increases. Additionally, the Stabilization program will provide resources that States and districts may use to implement important education reforms, such as launching strategies that address inequities in the distribution of highly qualified teachers, building robust data systems that allow districts to better track student achievement, raising standards and strengthening student assessments, and turning around failing schools. We are requesting approval of the amended version of this application so that States can provide updated information on State support for elementary and secondary education and public institutions of higher education in fiscal years 2009, 2010 and 2011. This is

necessary to ensure that States are fulfilling the requirements and obligations of the SFSF program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4093. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–17392 Filed 7–21–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Secondary Conditions in Rehabilitation of Individuals With Spinal Cord Injury (SCI); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–12.

Dates:

Applications Available: July 22, 2009.

Date of Pre-Application Meeting: August 6, 2009.

Deadline for Transmittal of Applications: August 21, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.

Priorities: This notice contains two absolute priorities and one invitational priority. Absolute Priority 1—General Rehabilitation Research and Training Centers (RRTC) Requirements is from the notice of final priorities for this program published in the **Federal Register** on February 1, 2008 (73 FR 6132). Absolute Priority 2—Secondary Conditions in Rehabilitation of Individuals with Spinal Cord Injury (SCI) is from the notice of final priorities for this program published in the **Federal Register** on July 25, 2003 (68 FR 44059).

Absolute Priorities: For FY 2009, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of the absolute priorities.

These priorities are:

Absolute Priority 1—*General Rehabilitation Research and Training Centers (RRTC) Requirements.*

Absolute Priority 2—*Secondary Conditions in Rehabilitation of Individuals with Spinal Cord Injury (SCI).*

Note: NIDRR strongly suggests proposing no more than three research projects under these absolute priorities.

Invitational Priority: Within these absolute priorities we are particularly interested in applications that address the following priority. For FY 2009, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences, including vocational rehabilitation and independent living service providers. Additional information on this center can be found at *http://msktc.washington.edu.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for this program published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priorities for this program published in the **Federal Register** on July 25, 2003 (68 FR 44059).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $800,000.

Maximum Award: We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133B–12.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this

competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: July 22, 2009.

Date of Pre-Application Meeting: August 6, 2009. Interested parties are invited to participate in the pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Room 6029, Potomac Center Plaza (PCP), 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Deadline for Transmittal of Applications: August 21, 2009. Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Secondary Conditions in Rehabilitation of Individuals with Spinal Cord Injury competition—CFDA Number 84.133B–12—must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–12), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–12), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes-oriented research or

development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of the proposed measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V. 2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

Each grantee must annually report its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: July 17, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–17493 Filed 7–21–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education Overview Information; Training and Advisory Services Program—Technical Assistance for Student Assignment Plans; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.004F.

Dates:

Applications Available: July 22, 2009.

Deadline for Notice of Intent To Apply: August 6, 2009.

Deadline for Transmittal of Applications: August 21, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Training and Advisory Services program is authorized under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c–2000c–2, 2000c–5. The February 23, 2009 House and Senate Conference Report (Conference Report) on H.R.

2241, the Omnibus Appropriations Act, 2009, states that within the $9,489,000 provided for Training and Advisory Services in FY 2009, the Congress made $2,500,000 available for one-time competitive grants to local educational agencies (LEAs) for technical assistance in preparing, adopting, or modifying, and implementing student assignment plans to avoid racial isolation and resegregation in the Nation's schools, and to facilitate student diversity, within the parameters of current law. The Conference Report further called for LEAs to use the grant funds to seek assistance and expertise from student assignment specialists, demographers, community relations specialists, facility and other planners, or curriculum specialists and others in comparable LEAs with relevant and successful experience, as well as specialists and consultants from academia, non-profit organizations, civil rights organizations, and the private sector.

Priorities: This notice contains one absolute priority and one competitive preference priority. We are establishing the absolute priority and the competitive preference priority for the FY 2009 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Absolute Priority—Technical Assistance for Facilitating Student Diversity.

Applications from LEAs seeking to obtain technical assistance in preparing, adopting, or modifying, and implementing student assignment plans that use strategies to avoid racial isolation and resegregation in their schools, and to facilitate student diversity, that are permissible within the parameters of current law. LEAs must use the grant funds to seek assistance and expertise from student assignment specialists, demographers, community relations specialists, facility and other planners, or curriculum specialists and others in comparable LEAs with relevant and successful experience, as well as specialists and consultants from academia, non-profit organizations, civil rights organizations, and the private sector.

Competitive Preference Priority: Within this absolute priority, we give preference to applications that address the following priority.

Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets this priority. This priority is:

Competitive Preference Priority—School-Board-Approved Voluntary Plans.

Applications from LEAs with existing school-board-approved voluntary student assignment plans, seeking to obtain technical assistance to modify or implement those plans.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. Public Law 111–8 and its accompanying conference report appropriated, for the first time, funds specifically for competitive, technical assistance grants to school districts under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c–2000c–2, 2000c–5. Therefore, this grant competition qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities under section 437(d)(1) of GEPA. These priorities will apply to the FY 2009 grant competition only.

Program Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

Note: The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,250,000.

Estimated Range of Awards: $200,000–250,000.

Estimated Average Size of Awards: $225,000.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of up to 24 months. The Secretary may award grants for up to 24 months but no grantee shall receive more than $250,000, regardless of the budget period. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* Local educational agencies (school districts).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:*

You can obtain an application package via the Internet or from the program office. To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/tasap/index.html.* To obtain a copy from the program office, write, fax, or call the following: Fran Walter, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W113, Washington, DC 20202–6400. *Telephone:* (202) 205–9198 or by *e-mail: fran.walter@ed.gov. Fax:* (202) 205–5870. If you use a telecommunications device for the deaf (TDD), call, *toll free:* 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent To Apply: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of applications we will receive. Therefore, we strongly encourage each potential applicant to send an e-mail notice of its intent to apply for funding to the following address: *fran.walter@ed.gov* by August 6, 2009. The notice of intent to apply is optional and should not include information about the potential applicant's proposal. LEAs that do not provide us with the notice of intent to apply may still submit an application.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the

application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 22, 2009.

Deadline for Transmittal of Applications: August 21, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible though the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Technical Assistance for Student Assignment Plans Program, CFDA number 84.004F, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Fran Walter, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W113, LBJ Building, Washington, DC, 20202. *fax:* (202) 205–5870.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.004F), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.004F), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The selection criteria for this competition are as follows:

(a) *Need for project.* (25 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Note: Included in the need for assistance will be consideration of the complexity of the student assignment plan—the extent to which the applicant's student assignment plan involves particular challenges because of either the size of the student body that is part of the plan, the diversity of the student population that is part of the plan, or the applicant's current pattern for assigning students to schools.

(b) *Significance.* (10 points)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system change or improvement.

(2) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

Note: In evaluating the extent to which the proposed project is likely to build capacity to expand services that address the needs of the target population, the Secretary considers how the student assignment plan will address the needs of the students, teachers, and others who will be affected by the plan.

(c) *Quality of the project design.* (15 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(d) *Quality of project services.* (15 points) The Secretary considers the quality of services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(2) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(3) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

Note: ''Project services'' are the technical assistance activities provided to the LEA that are related to the student assignment plan. ''Project participants'' are those individuals who would be participating in the technical assistance activities, who may include, as appropriate, teachers, principals, administrators, school board members, parents, and community leaders.

(e) *Quality of project personnel.* (10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Adequacy of resources.* (5 points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(g) *Quality of the management plan.* (10 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others as appropriate.

(h) *Quality of the project evaluation.* (10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measure for the Technical Assistance for Student Assignment Plans program: The percentage of grantees that have school board-approved student assignment plans by the end of the project period that can be, or are being, implemented.

VII. Agency Contact

For Further Information Contact: Fran Walter, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W113, Washington, DC 20202. *Telephone:* (202) 205–9198 or by *e-mail: fran.walter@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Joseph C. Conaty, Director, Academic

Improvement and Teacher Quality Programs for the Office of Elementary and Secondary Education to perform the functions of the Assistant Secretary for Elementary and Secondary Education.

Dated: July 16, 2009.

Joseph C. Conaty,

Director, Academic Improvement and Teacher Quality Programs.

[FR Doc. E9–17492 Filed 7–21–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Traumatic Brain Injury (TBI) Interventions; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–11.

Dates:

Applications Available: July 22, 2009.

Date of Pre-Application Meeting: August 6, 2009.

Deadline for Transmittal of Applications: August 21, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: This notice contains two absolute priorities and one invitational priority. Absolute Priority 1—-General Rehabilitation and Training Centers (RRTC) Requirements is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). Absolute Priority 2—*Traumatic Brain Injury (TBI) Interventions* is from the notice of final priorities for health and function outcomes for individuals with disabilities, published in the **Federal Register** on June 10, 2004 (69 FR 32824).

Absolute Priorities: For FY 2009, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of the absolute priorities.

These priorities are:

Absolute Priority 1—*General Rehabilitation Research and Training Centers (RRTC) Requirements.*

Absolute Priority 2—*Traumatic Brain Injury (TBI) Interventions.*

Note: NIDRR strongly suggests proposing no more than three research projects under these absolute priorities.

Invitational Priority: Within these absolute priorities, we are particularly interested in applications that address the following priority. For FY 2009, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences, including vocational rehabilitation and independent living service providers. (Additional information on this center can be found at *http://uwctds.washington.edu.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priorities for health and function outcomes for individuals with disabilities, published in the **Federal Register** on June 10, 2004 (69 FR 32824).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary Grant.

Estimated Available Funds: $800,000.

Maximum Award: We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133B–11.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the team or person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and

captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: July 22, 2009.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on August 6, 2009. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, room 6029, 550 12th Street, SW., Potomac Center Plaza (PCP), Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Deadline for Transmittal of Applications: August 21, 2009.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Research and Training Centers (RRTCs)—Traumatic Brain Injury Interventions competition, CFDA Number 84.133B–11, must be submitted electronically using e-Application, accessible through the Department's e-Grants portal page at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the

Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–11), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–11), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

Note: The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of the proposed measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems

or issues, and how the proposed activities will support new intervention approaches and strategies.

Submission of this information described in this note is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

Each grantee must annually report its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: July 17, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–17439 Filed 7–21–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Activities: Proposed Voluntary Collection for Reliability, Survivability, Resiliency (RSR) Project

AGENCY: Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Office of Electricity Delivery and Energy Reliability, Infrastructure Security and Energy Restoration have submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paper Work Reduction Act of 1995. The proposed collection will assist in identifying systemic problems and dependency issues impacting the energy sector's system-wide reliability, survivability and resiliency. This will also enhance pre-event planning to ensure a robust and resilient energy infrastructure in which continuity of business and service reliability are strengthened with industry cooperation.

DATES: Comments regarding this collection must be received on or before August 21, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

And to Kenneth Friedman, *Kenneth.friedman@hq.doe.gov*, 202–586–0379, mailing address: Forrestal Building, U.S. Department of Energy, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the information collection process and instructions should be directed to Kenneth Friedman, 202–586–0379, or at *kenneth.friedman@hq.doe.gov*. Mailing address is Forrestal Building, U.S. Department of Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) Information Collection Request for Reliability, Survivability, Resiliency (RSR) Project; (3) Type of Request: New Collection; (4) Purpose: DOE's Office of Electricity Delivery and Energy Reliability and the Infrastructure Security and Energy Restoration Division have launched the RSR Project to support the goals of the Energy Sector Specific plan (SSP) to ensure a robust and resilient energy infrastructure in which continuity of business and service reliability are strengthened. In cooperation with energy sector industry, the RSR Project will assist in identifying systemic problems and dependency issues that may impact system wide reliability, survivability and resiliency within the energy sector. Categories of information will include operational issues from recent history, controls safeguarding assets, supply chain critical suppliers, evaluation of emergency response, and mitigation of disruptions, consequence impact to business continuity and service, impact on local area, restoration and recovery time. The collected data will generate reports for ISER that will support pre-event planning. Feedback will be provided to industry that will address potential restoration concerns.

(5) Type of Respondents: Energy Sector Private Industry as voluntary participants (6) Estimated number of Respondents: 1500 industry participants. (7) Estimated number of Burden Hours: 30,000 hours based on 20 hours maximum time per site for a total of 1,500 sites. There is no requirement for record keeping and no requirement for annual reporting.

Statutory Authority: Department of Energy Organization Act (DOE Act), 42 U.S.C. 7101 *et seq.,* the Federal Power Act, 16 U.S.C. 792 *et seq.* Section 101(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c). Homeland Security Presidential Directive/HSPD7.

Issued in Washington, DC, on July 13, 2009.

William N. Bryan,

Deputy Assistant Secretary, Infrastructure Security & Energy Restoration.

[FR Doc. E9–17379 Filed 7–21–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico, Waste Management (WM) and Environmental Monitoring, Surveillance and Remediation (EMSR) Committees. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, August 12, 2009, 2 p.m.–4 p.m.

ADDRESSES: Northern New Mexico Citizens' Advisory Board Office, Conference Room, 1660 Old Pecos Trail, Suite B, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Welcome and Introductions

WM Committee/EMSR Committee Administrative Issues.

- Discussion and Approval of August 12, 2009 Committee Agenda.
- Discussion and Approval of July 15, 2009 EMSR Committee Minutes.
- Discussion and Approval of July 22, 2009 WM Committee Minutes.

Continue Fiscal Year 2010 Committee Work Plan Development.

- WM Committee—Gerry Maestas, WM Committee Chair.
- EMSR Committee—Mike Loya, EMSR Committee Chair.

Discuss Status of Draft Recommendations.

3:40 p.m. Public Comment Period.

4 p.m. Adjournment.

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC on July 17, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–17383 Filed 7–21–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 739–021]

Appalachian Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 15, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 739–021.

c. *Date Filed:* April 7, 2009.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Claytor Lake Project.

f. *Location:* The project is located on the New River, in Pulaski County, Virginia. The proposed non-project use is at the site of the existing Rock House Marina, located at the upper end of Peak Creek on Claytor Lake, the project reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, Appalachian Power Company, P.O. Box 2021, Roanoke, Virginia 24022–2121, (540) 985–2441.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High, telephone (202) 502–8674, and e-mail: *Shana.High@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 17, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Appalachian Power Company requests Commission authorization to permit Rock House Marina to replace its floating docks; dredge approximately 2,500 cubic yards of accumulated lakebed sediment; construct up to 17 fixed, covered docks; reface existing bulkheads; and construct two new sections of seawall. The existing marina can moor up to 128 boats. After completion of the proposed improvements, the marina would have 113 boat slips available for public use.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17341 Filed 7–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 13, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–586–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Fourth Revised Sheet 503 of its FERC Gas Tariff, Third Revised Volume 1, to be effective 7/13/09.

Filed Date: 06/12/2009.

Accession Number: 20090615–0030.

Comment Date: 5 p.m. Eastern Time on Friday, July 17, 2009.

Docket Numbers: RP09–658–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Second Revised Sheet No 385 *et al* to its FERC Gas Tariff, Third Revised Volume No 1.

Filed Date: 07/08/2009.

Accession Number: 20090709–0333.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: RP09–713–001.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gas Transmission Company submits Twelfth Revised Sheet No 286 *et al* to its FERC Gas Tariff, Second Revised Volume No 1.

Filed Date: 07/08/2009.

Accession Number: 20090709–0334.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: RP09–714–001.

Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Company submits Sixth Revised Sheet No 380 *et al* to its FERC Gas Tariff, First Revised Volume No 1.

Filed Date: 07/08/2009.

Accession Number: 20090709–0335.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: RP09–715–001.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Storage Company, LLC submits Second Revised Sheet No 186 *et al* to its FERC Gas Tariff, Original Revised Volume No 1.

Filed Date: 07/08/2009.

Accession Number: 20090709–0336.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: RP09–716–001.

Applicants: Central Kentucky Transmission Company.

Description: Central Kentucky Transmission Company submits Second Revised Sheet No 254 *et al* to its FERC Gas Tariff, Original Revised Volume No 1.

Filed Date: 07/08/2009.

Accession Number: 20090709–0337.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–17368 Filed 7–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

July 14, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP00–632–032.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. files its Informational Annual Fuel Report.

Filed Date: 06/30/2009.

Accession Number: 20090630–5073.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: RP09–645–001.

Applicants: Liberty Gas Storage, LLC.

Description: Liberty Gas Storage, LLC submits Substitute Original Sheet 149–A to FERC Gas Tariff, Original Volume 1, to become effective 8/1/09.

Filed Date: 07/09/2009.

Accession Number: 20090713–0162.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: RP09–558–001.

Applicants: Transcontinental Gas Pipe Line Company,

Description: Transcontinental Gas Pipe Line Company, LLC submits additional information re its 4/30/09 tariff filing to establish new Rate Schedules Firm Delivery Lateral Service and Interruptible Delivery Lateral Service, etc.

Filed Date: 07/10/2009.

Accession Number: 20090713–0212.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: RP09–617–001.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits Fifth Revised Sheet 10 to FERC Gas Tariff, First Revised Volume 1, to be effective 7/1/09.

Filed Date: 07/10/2009.

Accession Number: 20090713–0164.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: RP09–737–001.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits Substitute Fourth Revised Sheet No 412A for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No 1.

Filed Date: 07/13/2009.

Accession Number: 20090713–0218.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. 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.

Nathaniel J. Davis,

Deputy Secretary.

[FR Doc. E9–17367 Filed 7–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

July 14, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–821–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits First Revised Sheet 14H et al. to FERC Gas Tariff, Original Volume 1, to be effective 7/9/09.

Filed Date: 07/09/2009.

Accession Number: 20090713–0163.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: RP09–822–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits First Revised Sheet 505 et al. to FERC Gas Tariff, Third Revised Volume 1, to be effective 8/10/09.

Filed Date: 07/10/2009.

Accession Number: 20090713–0161.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: RP09–823–000.

Applicants: Algonquin Gas Transmission Company.

Description: Algonquin Gas Transmission, LLC submits First Revised Sheet No. 50 et al. to FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective 8/10/09.

Filed Date: 07/10/2009.

Accession Number: 20090713–0160.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: RP09–824–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overtrust Pipeline Company submits Fifth Revised Sheet No. 6 to Second Revised Volume No. 1–A, effective 7/1/09.

Filed Date: 07/13/2009.
Accession Number: 20090713–0216.
Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09–825–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits nonconforming firm transportation discounted rates letter agreement dated 3/26/99.
Filed Date: 07/13/2009.
Accession Number: 20090713–0217.
Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09–827–000.
Applicants: Cimarron River Pipeline, LLC.
Description: 2009 Annual Report of Cash Out Activity of Cimarron River Pipeline, LLC.
Filed Date: 07/14/2009.
Accession Number: 20090714–5032.
Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–17366 Filed 7–21–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

July 15, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–508–001.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits Seventh Revised Sheet No 501 et al to its FERC Gas Tariff, Seventh Revised Volume No 1.
Filed Date: 07/14/2009.
Accession Number: 20090714–0103.
Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09–687–001.
Applicants: Equitrans, L.P.
Description: Equitrans, LP submits Substitute Seventh Revised Sheet 308 to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.
Filed Date: 07/14/2009.
Accession Number: 20090714–0104.
Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern Time on the specified comment date. 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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–17365 Filed 7–21–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 14, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–73–000.
Applicants: Dominion Nuclear Connecticut, Inc.
Description: Notice of Self Certification of Exempt Wholesale Generator Status by Dominion Nuclear Connecticut, Inc.
Filed Date: 07/10/2009.
Accession Number: 20090710–5019.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–1150–001.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc submits First Revised Network Integration Transmission Service Agreement, et al.
Filed Date: 07/08/2009.
Accession Number: 20090709–0338.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: ER09–1414–001.
Applicants: GDF SUEZ Energy Marketing NA, Inc.
Description: Amendment to Application of GDF SUEZ Energy Marketing NA, Inc. for Finding of

Category 1 Seller Status in the Central, SPP, Southwest and Northwest Regions.
Filed Date: 07/10/2009.
Accession Number: 20090710–5134.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1423–001.
Applicants: Verde Energy USA, Inc.
Description: Verde Energy USA, Inc submits an amended application for authorization to make wholesale sales of energy, capacity, and ancillary services at negotiated market based rates.
Filed Date: 07/10/2009.
Accession Number: 20090713–0211.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1424–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc submits informational filing for qualification in the Forward Capacity Market for the 2012–2013 Capacity Commitment Period.
Filed Date: 07/07/2009.
Accession Number: 20090709–0277.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09–1429–000.
Applicants: Black Hills Wyoming, LLC.
Description: Black Hills Wyoming, LLC submits Notice of Succession and a market-based rate wholesale power sales tariff.
Filed Date: 07/09/2009.
Accession Number: 20090710–0034.
Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–1430–000.
Applicants: ISO New England Inc., Bangor Hydro-Electric Company.
Description: ISO New England Inc et al submit notice cancelling the Standard Large Generator Interconnection Agreement by and among ISO, BHE and Georgia Pacific Corporation.
Filed Date: 07/09/2009.
Accession Number: 20090710–0035.
Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–1431–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc et al submits amendments to revise the method of allocating the cost of Network Upgrades etc.
Filed Date: 07/09/2009.
Accession Number: 20090710–0033.
Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–1432–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits Facilities Construction Agreement among the Midwest ISP, Minnkota Power Cooperative, Inc, and Northern States Power Company.
Filed Date: 07/09/2009.
Accession Number: 20090710–0101.
Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–1433–000.
Applicants: ISO New York Independent System Operator Inc.
Description: New York Independent System Operator Inc submits proposed revisions to its Market Administration and Control Area Services Tariff to exempt certain Generators and Qualified Non-Generator Voltage Support Resources etc.
Filed Date: 07/10/2009.
Accession Number: 20090713–0169.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1434–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits executed service agreement for network integration transmission service between SPP as transmission provider and City of Prescott as network customer, et al.
Filed Date: 07/10/2009.
Accession Number: 20090713–0204.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1435–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits a newly proposed Schedule 34 of the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 07/10/2009.
Accession Number: 20090713–0167.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1436–000.
Applicants: Xcel Energy Services Inc.
Description: Southwestern Public Service Company submits Notice of Termination of the Electric Power Service Agreement between SPS and the Empire District Electric Company, FERC Rate Schedule 124 and Supplements 1 to 5.
Filed Date: 07/10/2009.
Accession Number: 20090713–0168.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1437–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits average system cost filing for sales of electric power to Bonneville Power Administration.
Filed Date: 07/10/2009.
Accession Number: 20090713–0205.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1438–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Co submits its Average System Cost filing for sales of electric power to the Bonneville Power Administration.
Filed Date: 07/10/2009.
Accession Number: 20090713–0213.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1439–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits average system cost filing for sales of electric power to the Bonneville Power Administration.
Filed Date: 07/10/2009.
Accession Number: 20090713–0206.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1440–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc submits information related to PSE's residential purchase and sale agreement with the Bonneville Power Administration.
Filed Date: 07/10/2009.
Accession Number: 20090713–0207.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1441–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits notice of cancellation of MidAmerican Energy Company FERC Electric Rate Schedule No 201.
Filed Date: 07/10/2009.
Accession Number: 20090713–0208.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1442–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits notice of cancellation of MidAmerican Energy Company FERC Electric Rate Schedule No 200.
Filed Date: 07/10/2009.
Accession Number: 20090713–0209.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1443–000.
Applicants: American Electric Power Service Corporate, Buckeye Power, Inc.
Description: American Electric Power Service Corporation submits Eighteenth Revised Interconnection and Local Delivery Service Agreement between AEP and Buckeye Power, Inc.
Filed Date: 07/10/2009.
Accession Number: 20090713–0210.

Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Docket Numbers: ER09–1444–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits partially executed Amended and Restated Large Generator Interconnection Agreement with Lost Lakes Wind Farm LLC.
Filed Date: 07/10/2009.
Accession Number: 20090714–0009.
Comment Date: 5 p.m. Eastern Time on Friday, July 31, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–28–001.
Applicants: Entergy Mississippi, Inc.
Description: Supplemental information of Entergy Services, Inc.
Filed Date: 07/10/2009.
Accession Number: 20090710–5131.
Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA97–139–001; TS09–8–000.
Applicants: Otter Tail Power Company.
Description: Notice of Material Change in Facts Relating to Waiver of Order No. 889 and part 358 of the Commission's Regulations of Otter Tail Power Company.
Filed Date: 07/13/2009.
Accession Number: 20090713–5222.
Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9–17363 Filed 7–21–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 15, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–94–000.
Applicants: Covanta Holding Corporation, Veolia Environmental Services North Amer, Montenay International Corp, MONTENAY MONTGOMERY LTD PARTNERSHIP
Description: Joint Application for Authorization of Disposition of Facilities under Section 203 of the Federal Power Act and Request for Expedited Consideration and Waivers of Montenay Montgomery Limited Partnership, et al.
Filed Date: 07/13/2009.
Accession Number: 20090713–5232.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–74–000.
Applicants: Fox Islands Wind LLC.
Description: Self Certification Notice of Exempt Wholesale Generator Status of Fox Islands Wind LLC.
Filed Date: 07/15/2009.
Accession Number: 20090715–5048.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: EG09–75–000.
Applicants: BP Alternative Energy North America, Inc.
Description: Notice of Self-Certification of Rolling Thunder I Power Partners, LLC as an Exempt Wholesale Generator.
Filed Date: 07/15/2009.
Accession Number: 20090715–5051.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–552–011; ER03–984–009.
Applicants: New York Independent System Operator, Inc.
Description: Status Report of New York Independent System Operator, Inc.
Filed Date: 07/15/2009.
Accession Number: 20090715–5015.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: ER09–1339–002.
Applicants: Grand Ridge Energy II LLC.
Description: Grand Ridge Energy II LLC submits supplement to the market-based rate application it filed with the FERC on 6/25/09, as supplemented on 6/26/09.
Filed Date: 07/14/2009.
Accession Number: 20090715–0135.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 4, 2009.

Docket Numbers: ER09–1340–002.
Applicants: Grand Ridge Energy III LLC.
Description: Grand Ridge Energy III LLC submits supplement to the market-based rate application it filed with the FERC on 6/25/09, as supplemented on 6/26/09.
Filed Date: 07/15/2009.
Accession Number: 20090715–0137.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: ER09–1341–002.
Applicants: Grand Ridge Energy IV LLC.
Description: Grand Ridge Energy II LLC submits supplement to the market-based rate application it filed with the FERC on 6/25/09, as supplemented on 6/26/09.
Filed Date: 07/14/2009.
Accession Number: 20090715–0136.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 4, 2009.

Docket Numbers: ER09–1342–002.
Applicants: Grand Ridge Energy V LLC.
Description: Grand Ridge Energy V LLC submits supplement to the market based rate application filed on 6/25/09, as supplemented on 6/26/09.
Filed Date: 07/14/2009.
Accession Number: 20090715–0134.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 4, 2009.

Docket Numbers: ER09–1412–000.
Applicants: U.S. Energy Partners LLC.
Description: US Energy Partners LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority FERC Electric Tariff, Original Volume 1, effective 9/10/09.
Filed Date: 07/13/2009.
Accession Number: 20090715–0099.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: ER09–1445–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits an executed Generator Interconnection Agreement with Northern States Power Company et al.
Filed Date: 07/13/2009.
Accession Number: 20090714–0011.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: ER09–1446–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, LLC submits Original Service Agreement 2205 to FERC Electric Tariff, Sixth Revised Volume 1.
Filed Date: 07/13/2009.
Accession Number: 20090714–0065.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: ER09–1447–000.
Applicants: Xcel Energy Operating Companies.
Description: Xcel Energy Operating Companies submits Original Sheet 1 et al to FERC Electric Tariff, Original Volume 5, Service Agreement 223–PSCo.
Filed Date: 07/13/2009.
Accession Number: 20090714–0056.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: ER09–1448–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits First Revised Sheet 7 et al to FERC Electric Tariff, First Revised Volume 5 Service Agreement 90.
Filed Date: 07/13/2009.
Accession Number: 20090714–0057.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: ER09–1449–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits its Average System Cost filing for sales of electric power to the Bonneville Power Administration.
Filed Date: 07/13/2009.
Accession Number: 20090714–0087.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: ER09–1451–000.
Applicants: Bayside Power L.P.
Description: Bayside Power, LP submits Notice of Cancellation of Market Based Rate Tariff.
Filed Date: 07/14/2009.
Accession Number: 20090714–0095.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 4, 2009.

Docket Numbers: ER09–1452–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits an updated Appendix A to the Second Amended and Restated Transmission Service and Operating Agreement.
Filed Date: 07/14/2009.
Accession Number: 20090714–0096.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 4, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–39–000.
Applicants: Duquesne Light Company.
Description: Application of Duquesne Light Company for Order authorizing issuance of short-term indebtedness.
Filed Date: 07/14/2009.
Accession Number: 20090714–5141.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 4, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–72–004.
Applicants: Northwestern Corporation (Montana).
Description: Compliance Filing of Northwestern Corporation (Montana).
Filed Date: 07/14/2009.
Accession Number: 20090714–5104.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 4, 2009.

Docket Numbers: OA97–93–001; TS04–178–001.
Applicants: The Empire District Electric Company.
Description: The Empire District Electric Company Notice of Change in Facts and Request for Renewal of Waiver of Standards of Conduct, or, in the Alternative, Request for Extension of Time to Comply With the Standards of Conduct.
Filed Date: 07/13/2009.
Accession Number: 20090713–5233.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–17362 Filed 7–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EG09–37–000]

Optim Energy Cedar Bayou 4, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

July 14, 2009.

Take notice that during the month of June 2009, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17337 Filed 7–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09–561–000; ER06–493–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

July 14, 2009.

Take notice that on June 25, 2009, the Midwest Independent Transmission System Operator, Inc. filed a notice of withdrawal of market participant suspension and termination filings related to Revenue Sufficiency Guarantee Resettlements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17336 Filed 7–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS09–7–000]

Muscatine Power & Water; Notice of Filing

July 15, 2009.

Take notice that on June 25, 2009, The Board of Water, Electric and Communications Trustees for the City of Muscatine, Iowa, d/b/a Muscatine Power & Water filed a request for exemption of Part 358 of the Commission's Regulations for Standards of Conduct requirements, pursuant to Order No. 889, as revised by Order No. 2004, Order No. 690, and Order No. 717.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 27, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17338 Filed 7–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

July 15, 2009.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., section 4314(c)(4). The Commission's PRB will add the following members:

Norman C. Bay,
Michael C. McLaughlin,
Jamie L. Simler,
Jeff C. Wright.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17344 Filed 7–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

July 15, 2009.

The Federal Energy Regulatory Commission hereby provides notice of

the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., section 4314(c)(4). The Commission's PRB will remove the following members:
Shelton M. Cannon,
J. Mark Robinson,
Susan J. Court.

Kimberly D. Bose,
Secretary.
[FR Doc. E9–17340 Filed 7–21–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–29–000]

Cypress Gas Pipeline, LLC; Notice of Petition for Rate Approval

July 15, 2009.

Take notice that on July 13, 2009, Cypress Gas Pipeline, LLC (Cypress) filed a petition for rate approval for NGPA section 311 maximum transportation rates for interruptible transportation service, pursuant to section 284.123(b)(2) of the Commission's regulations. Cypress proposes to increase its currently effective maximum system-wide rate for interruptible transportation from $0.1233 per MMBtu to $0.3878 per MMBtu.

Any person desiring to participate in this rate proceeding must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.
Comment Date: 5 p.m. Eastern time on Thursday, July 30, 2009.

Kimberly D. Bose,
Secretary.
[FR Doc. E9–17343 Filed 7–21–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–28–000]

Acadian Gas Pipeline System; Notice of Petition for Rate Approval

July 15, 2009.

Take notice that on July 13, 2009, Acadian Gas Pipeline System (Acadian) filed a petition for rate approval for NGPA Section 311 maximum interruptible transportation rates, pursuant to section 284.123(b)(2) of the Commission's regulations. Acadian requests that the Commission approve an increase in its maximum rate for interruptible transportation from $0.25 per MMBtu to $0.3683 per MMBtu for gas transported under section 311.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.
Comment Date: 5 p.m. Eastern time on Thursday, July 30, 2009.

Kimberly D. Bose,
Secretary.
[FR Doc. E9–17342 Filed 7–21–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2009 Resource Pool—Loveland Area Projects—Final Power Allocation

AGENCY: Western Area Power Administration, DOE.
ACTION: Notice of Final Power Allocation.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, announces its Post-2009 Resource Pool Final Power Allocation developed under the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule, 10 CFR part 905.

Final allocations are published to show Western's decisions prior to beginning the contractual phase of the process. Firm electric service contracts negotiated between Western and allottees will permit delivery of power from the October 2009 billing period,

through the September 2024 billing period.

DATES: The Post-2009 Resource Pool Final Power Allocation will become effective August 21, 2009, and will remain in effect until September 30, 2024.

ADDRESSES: Information about the Post-2009 Resource Pool Allocation, including comments, letters, and other supporting documents, is available for public inspection and copying at the Rocky Mountain Customer Service Region office, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

SUPPLEMENTARY INFORMATION: Western published the Post-2009 Resource Pool—Loveland Area Projects—Allocation Procedures and Call for Applications (Procedures) on October 22, 2008 (73 FR 62981), to implement Subpart C—Power Marketing Initiative of the Program's Final Rule, 10 CFR part 905, published on October 20, 1995, at 60 FR 54151, as revised on March 30, 2000, at 65 FR 16795. The Program, developed in part to implement section 114 of the Energy Policy Act of 1992 (Pub. L. 102–486), became effective on November 20, 1995. The Program establishes project-specific power resource pools and provides for the allocation of power from these pools to new preference customers. The allocation procedures, in conjunction with the General Power Marketing and Allocation Criteria (Criteria) (51 FR 4012, January 31, 1986), establish the framework for allocating power from the Loveland Area Projects (LAP) resource pool.

Western published its proposed allocation and initiated a public comment period in the **Federal Register** (74 FR 13430, March 27, 2009). A public comment forum on the proposed allocation was held April 16, 2009. Public comments were due to Western by April 27, 2009, at 4 p.m. MDT. Western received one comment regarding the proposed allocation.

I. Comment and Response

Comment: One customer commented that with fewer eligible applicants, an allottee may get more power than if there were more eligible applicants for the resource pool.

Response: Each eligible allottee receives a proportional share of the resource pool based on its average seasonal load; however, each allottee receiving an allocation from a LAP resource pool is capped at 5,000 kilowatts (kW) of capacity. The energy is similarly capped to be consistent with the capacity allocation. This method complies with EPAMP and is consistent with RMR's previous resource pool allocation process.

II. Amount of Pool Resources

Western will allocate up to 1 percent (1%) of the LAP long-term hydroelectric resource available as of October 1, 2009. Approximately 6.9 megawatts (MW) of capacity and 11.3 gigawatt-hours (GWh) of energy will be available for the summer season. Winter availability will be approximately 6.1 MW of capacity and 9.1 GWh of energy. This resource pool is created by reducing existing customers' allocations by up to 1%.

III. Final Power Allocation

Western received four applications for the Post-2009 LAP resource pool. All applicants were eligible and four allocations were proposed. Since the proposed allocations were published, one entity with a proposed allocation, the University of Wyoming, was unable to obtain delivery of its allocation and withdrew its application. As provided in the Procedures, the total resource was redistributed to the remaining allottees. Through this redistribution, the City of Russell's summer capacity exceeded the 5,000 kW maximum by 570 kW. The 570 kW and associated summer energy of 932,451 kWh is being returned to the existing customers. The final power allocations are made in accordance with the Procedures and are shown in the table below.

Allottees	Final post-2009 power allocation			
	Summer kilowatthours	Winter kilowatthours	Summer kilowatts	Winter kilowatts
City of Arma, KS	629,922	519,887	385	345
City of Cimarron, KS	1,559,261	1,121,710	953	746
City of Russell, KS	8,180,803	7,464,553	5,000	4,962
Total Resource Pool	10,369,986	9,106,150	6,338	6,053

The final power allocations shown in the table above are based on the LAP marketable resource currently available. If the LAP marketable resource is adjusted in the future, all allocations may be adjusted accordingly. Long-term firm energy with associated capacity made available for marketing because an allocation(s) has been reduced or withdrawn may be administratively reallocated by Western's Administrator without further public process (Criteria Section V.C.3.).

IV. Review Under the National Environmental Policy Act

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Dated: June 15, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–17419 Filed 7–21–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1184; FRL–8933–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emissions Certification and Compliance Requirements for Locomotives and Locomotive Engines (Renewal); EPA ICR No. 1800.06, OMB Control No. 2060–0392

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information

Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 21, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–1184, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; e-mail address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 15, 2008 (73 FR 2487), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–1184, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http:www.regulations.gov*.

Title: Emissions Certification and Compliance Requirements for Locomotives and Locomotive Engines (Renewal).

ICR Numbers: EPA ICR No. 1800.06, OMB Control No. 2060–0392.

Abstract: Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) (CAA) charges EPA with issuing certificates of conformity for those engines that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production engines, including detailed descriptions of emission control systems and test data. There are also recordkeeping requirements. Manufacturers electing to participate in the Averaging, Banking and Trading Program are also required to submit information regarding the calculation, actual generation and usage of credits in an initial report, end-of-the-year report and final report. These reports are used for certification and enforcement purposes. The Act also mandates that EPA verify that manufacturers have successfully translated their certified prototypes into mass produced engines, and that these engines comply with emission standards throughout their useful lives. This is accomplished under the Production Line Testing (PLT) and In-use Testing Programs. Selective Enforcement Audits provide verification that test data submitted by engine manufacturers is reliable and testing is performed according to EPA regulations. Manufacturers must also keep records. This information is collected by the Heavy-Duty and Nonroad Engines Group (HDNEG), Compliance and Innovative Strategies Division (CISD), Office of Transportation and Air Quality, Office of Air and Radiation, U.S. Environmental Protection Agency. Besides CISD, this information could be used by the Office of Enforcement and Compliance Assurance and the Department of Justice for enforcement purposes. Confidential Business Information (CBI) is also disclosed in a public database and over the Internet. It is used by trade associations, environmental groups, and the public. The information is usually submitted in an electronic format, and it is stored in HDNEG's certification database. It has been estimated that a total of 10 locomotive and locomotive engine manufacturers and remanufacturers will respond to this collection with an approximate cost of $2,349,724.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by these actions are manufacturers and remanufacturers of locomotives and locomotive engines.

Estimated Number of Respondents: 10.

Frequency of Response: Annually, quarterly, and occasionally.

Estimated Total Annual Hour Burden: 21,129.

Estimated Total Annual Cost: $2,349,724 includes $1,365,299 annualized O&M costs.

Changes in the Estimates: There is a slight decrease (159 hours) in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to changes in the estimated number of new applications EPA expects to receive during the next three years as opposed to carry over applications.

Dated: July 16, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–17395 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0039; FRL–8933–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements of the HCFC Allowance System (Renewal); EPA ICR No. 2014.04, OMB Control No. 2060–0498

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 21, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0039, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Burchard, Office of Atmospheric Programs, Office of Air and Radiation, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9126; fax number: 202–343–2338; e-mail address: *burchard.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 24, 2009 (74 FR 8252), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0039, which is available for online viewing at *http://www.regulations.gov*, or in person viewing 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/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Reporting and Recordkeeping Requirements of the HCFC Allowance System (Renewal).

ICR numbers: EPA ICR No. 2014.04, OMB Control No. 2060–0498.

ICR status: This ICR is scheduled to expire on July 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The international treaty The Montreal Protocol on Substances That Deplete the Ozone Layer (Protocol) and Title VI of the Clean Air Act Amendments (CAAA) established limits on total U.S. production, import, and export of class I and class II controlled ozone depleting substances (commonly referred to as ''controlled substances'').

Under its Protocol commitments, the United States was obligated to cease production and import of class I controlled substances (e.g., chlorofluorocarbons or CFCs) with exemptions for essential uses, critical uses, previously used material, and material that is transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of class II controlled substances (i.e., hydrochlorofluorocarbons or HCFCs).

The U.S. is obligated to limit HCFC consumption (defined by the Protocol as production plus imports, minus exports). The schedule called for a 35 percent reduction on January 1, 2004, followed by a 75 percent reduction on January 1, 2010, a 90 percent reduction on January 1, 2015, a 99.5 percent reduction on January 1, 2020, and a total phaseout on January 1, 2030. The U.S. Environmental Protection Agency (EPA) is responsible for administering the phaseout. The U.S. comfortably met the 35% reduction of the cap, and is on schedule to meet the 75% reduction for January 1, 2010.

To ensure the U.S. compliance with these limits and restrictions, EPA established an allowance system to control U.S. production and import of HCFCs by granting control measures referred to as baseline allowances. Baseline allowances are based on the historical activity of individual companies. There are two types of allowances: consumption and production allowances. Since each allowance is equal to 1 kilogram of HCFC, EPA is able to monitor the quantity of HCFCs being produced, imported and exported. Transfers of production and consumption allowances among producers and importers are allowed and are tracked by EPA.

The limits and restrictions for individual U.S. companies are monitored by EPA through the recordkeeping and reporting requirements established in the regulations in 40 CFR part 82, subpart A. To submit required information, regulated entities can download reporting forms from EPA's Web site (*http://www.epa.gov/ozone/record.index.html*), complete them, and send them to EPA electronically, via mail, courier, or fax. Almost all of the large regulated companies use the EPA reporting forms.

Upon receipt of the reports, the data is entered into the ODS Tracking System. The ODS Tracking System is a secure database that maintains the data submitted to EPA and helps the Agency: (1) Maintain oversight over total production and consumption of controlled substances; (2) monitor compliance with limits and restrictions on production, imports, and trades and specific exemptions from the phaseout for individual U.S. companies; (3) enforce against illegal imports; and (4) assess, and report on, compliance with the U.S. phasedown caps established under the Montreal Protocol.

EPA has implemented an electronic reporting system through the Agency's Central Data Exchange (CDX) that allows regulated entities to prepare and submit data electronically. Coupled with the widespread use of the standardized forms, electronic reporting has improved data quality and made the reporting process efficient for both reporting companies and EPA. Most reports that are submitted to the Agency with the largest amount of data are submitted electronically.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Companies that produce, import, and export class II controlled ozone depleting substances

Estimated Number of Respondents: 53

Frequency of Response: Occasionally

Estimated Total Annual Hour Burden: 1,860 hours

Estimated Total Annual Cost: $181,532, which includes $1,140 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 228 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This change can be attributed to two major changes: (1) An increase in the number of responses for the Request for Additional Allowance Report and Domestic Transfer of Allowances/Inter-pollutant Transfer Report and (2) an increase in the number of activities per year for the Petition to Import Used Substances.

Dated: July 16, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–17399 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8933–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund, (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2173.02; Reporting Requirements under EPA's Green Power Partnership and Combined Heat and Power Partnership (Renewal); was approved 06/10/2009; OMB Number 2060–0578; expires 06/30/2012.

EPA ICR Number 1773.09; NESHAP for Hazardous Waste Combustors (Renewal); in 40 CFR part 63, subpart EEE; was approved 06/12/2009; OMB Number 2050–0171; expires 06/30/2012.

EPA ICR Number 1871.05; NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards (Renewal); in 40 CFR part 63, subpart YY; was approved 06/30/2009; OMB Number 2060–0420; expires 06/30/2012.

EPA ICR Number 0111.12; NESHAP for Asbestos (Renewal); in 40 CFR part 61, subpart M; was approved 06/30/2009; OMB Number 2060–0101; expires 06/30/2012.

EPA ICR Number 1964.04; NESHAP for Wet-formed Fiberglass Mat Production (Renewal); in 40 CFR part 63, subpart HHHH; was approved 06/30/2009; OMB Number 2060–0496; expires 06/30/2012.

EPA ICR Number 0262.12; RCRA Hazardous Waste Permit Application and Modification, Part A (Renewal); in 40 CFR 270.11, 270.13, 270.70 and 270.72; was approved 07/02/2009; OMB Number 2050–0034; expires 07/31/2012.

EPA ICR Number 1775.05; Hazardous Remediation Waste Management Requirements (HWIR–Media) (Renewal); in 40 CFR part 264, 271.21, and 270; was approved 07/02/2009; OMB Number 2050–0161; expires 07/31/2012.

EPA ICR Number 1100.13; NESHAP for Radionuclides (Renewal); in 40 CFR part 61, subparts B, K, R and W; was approved 07/02/2009; OMB Number 2060–0191; expires 07/31/2012.

EPA ICR Number 1395.07; Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal); in 40 CFR part 355; was approved 07/04/2009; OMB Number 2050–0092; expires 07/31/2012.

EPA ICR Number 1361.12; Expanding the Comparable Fuels Exclusion under RCRA (Final Rule); in 40 CFR 261.38; was approved 07/06/2009; OMB Number 2050–0073; expires 07/31/2012.

EPA ICR Number 2040.04; NESHAP for Refractory Products Manufacturing (Renewal); in 40 CFR part 63, subpart SSSSS; was approved 07/07/2009; OMB Number 2060–0515; expires 07/31/2012.

EPA ICR Number 2285.01; Schools Chemical Cleanout Campaign (SC3); was approved 07/07/2009; OMB Number 2050–0203; expires 07/31/2012.

EPA ICR Number 2251.02; Control of Emissions from Nonroad Spark-Ignition Engines and Equipment (Final Rule); in 40 CFR part 1065; was approved 07/08/2009; OMB Number 2060–0603; expires 07/31/2012.

EPA ICR Number 1722.06; Emission Certification and Compliance Requirements for Marine Spark-ignition Engines (Final Rule); in 40 CFR 91.107, 91.105, 91.121, 91.122, 91.124, 91.208, 91.209, 91.504, 91.509, 91.804, and 91.805; was approved 07/08/2009; OMB Number 2060–0321; expires 07/31/2012.

EPA ICR Number 1684.13; Emissions Certification, Compliance and In-use Testing Requirements for On-highway Heavy Duty Engines and Vehicles Equipped with On-Board Diagnostics

(Amendment) (Final Rule); in 40 CFR part 1042, subparts C, D, G and H; was approved 07/08/2009; OMB Number 2060–0287; expires 07/31/2012.

EPA ICR Number 1745.06; Criteria for Classification of Solid Waste Disposal Facilities and Practices (Renewal); in 40 CFR part 257, subpart B; was approved 07/10/2009; OMB Number 2050–0154; expires 07/31/2012.

EPA ICR Number 2027.04; NESHAP for Flexible Polyurethane Foam Fabrication (Renewal); in 40 CFR part 63, subpart MMMMM; was approved 07/10/2009; OMB Number 2060–0516; expires 07/31/2012.

EPA ICR Number 2056.03; NESHAP for Miscellaneous Metal Parts and Products (Renewal); in 40 CFR part 63, subpart MMMM; was approved 07/10/2009; OMB Number 2060–0486; expires 07/31/2012.

EPA ICR Number 1656.13; Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under Section 112(r) of the Clean Air Act (Renewal); in 40 CFR part 68; was approved 07/10/2009; OMB Number 2050–0144; expires 07/31/2012.

EPA ICR Number 2317.01; Generator Standards Applicable to Laboratories Owned by Eligible Academic Entities (Final Rule); in 40 CFR part 262, subpart K; was approved 07/10/2009; OMB Number 2050–0204; expires 07/31/2012.

OMB Comments Filed

EPA ICR Number 2355.01; Restructuring of Stationary Source Audit Program (Proposed Rule); OMB filed comment on 06/30/2009.

EPA ICR Number 1975.06; NESHAP for Stationary Reciprocating Internal Combustion Engines (40 CFR part 63, subpart ZZZZ) (Proposed Rule); OMB filed comment on 07/04/2009.

EPA ICR Number 2348.01; NESHAP for Paints and Allied Products Manufacturing (40 CFR part 63, subpart CCCCCCC) (Proposed Rule); OMB filed comment on 07/07/2009.

EPA ICR Number 2332.01; NESHAP for Aluminum, Copper, and Other Nonferrous Foundries (Proposed Rule); OMB filed comment on 07/10/2009.

Dated: July 16, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–17397 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0010; FRL–8426–6]

1,2-Ethylene Dichloride; Completion of EPA Program Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued a testing consent order that incorporated an enforceable consent agreement (ECA) for 1,2-Ethylene Dichloride (EDC) in June 2003, using authorities under section 4 of the Toxic Substances Control Act (TSCA). The companies subject to the ECA agreed to conduct toxicity testing in a tiered testing program that included development of pharmacokinetics and mechanistic data and a computational dosimetry model for route-to-route extrapolations. The testing program was designed to satisfy the toxicological data needs for EDC identified in a TSCA section 4 proposed test rule for a number of hazardous air pollutant chemicals. The modeling is intended to allow toxicological studies conducted using oral exposures to be interpreted so that they could also be used to predict the effects of inhalation exposures. This notice announces the completion of the program review component of the ECA for EDC. This notice also states EPA's findings and conclusion regarding the adequacy of the derived models to perform satisfactory route-to-route extrapolations, responds to comments on the Tier I Program Review Testing, and establishes revised deadlines for completion of Tier II testing and computational route-to-route dosimetry modeling for extrapolations listed under Tier II of the ECA for EDC.

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

For technical information contact: John Schaeffer, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8173; e-mail address: *schaeffer.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0010. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

A. What is the EPA Program Review for EDC?

In the **Federal Register** of September 5, 2006 (71 FR 52329) (FRL–8088–3), EPA announced that it was conducting the program review component of the ECA for the EDC alternative testing program, and solicited public comment on data received under the Tier I Program Review testing segment of the ECA for EDC (CAS No. 107–06–2). Comments were to inform EPA's decision on whether or not additional data and/or model development are needed before Tier II testing and computational route-to-route dosimetry modeling extrapolations could proceed for the Tier II endpoints listed in the ECA for EDC. Details of the testing program for EDC are available in the ECA and in the **Federal Register** of June 3, 2003 (68 FR 33125) (FRL–7300–6), in which EPA announced it had entered into an ECA and issued a testing consent order for EDC. The ECA for EDC was developed in response to EPA's request for ECA proposal for health effects testing of a number of hazardous air pollutants (HAPs or HAP chemicals), including EDC (see the proposed test rule in the **Federal Register** of June 26, 1996 (61 FR 33177) (FRL–4869–1), and the proposed test rule, as amended, in the **Federal Register** of December 24, 1997 (62 FR 67466) (FRL–5742–2); February 5, 1998 (63 FR 5915) (FRL–5769–3); and April 21, 1998 (63 FR 19694) (FRL–5780–6)). The HAPs rulemaking proposed testing for health effects by the inhalation route of exposure. In the proposed rule, EPA also invited the submission of proposals that included pharmacokinetics studies and model development that would permit the extrapolation of testing administered by other exposure routes, such as the oral route, to predict for inhalation exposures. On November 22, 1996, Dow Chemical Company, Vulcan Materials Company (no longer in existence), Occidental Chemical Corporation, Oxy Vinyls, LP, Georgia Gulf Corporation, Westlake Chemical Corporation, PPG Industries, Inc., and Formosa Plastics Corporation, U.S.A. (the ''Companies''), under the auspices of the HAP Task Force, submitted a proposal for alternative testing of EDC that included physiologically based pharmacokinetics (PBPK) and model development to support route-to-route extrapolation of testing to be conducted under the ECA by the oral route. EPA considered this proposal sufficient to enter into ECA negotiations with the Companies and other interested parties (62 FR 66626; December 19, 1997) (FRL–5763–1). The ECA for EDC that resulted was announced in the **Federal Register** of June 3, 2003 (68 FR 33125). Since the route-to-route extrapolation of test results was a new approach, EPA and the Companies included a program review step within the testing program. The testing program consists of Tier I HAPs Testing; Tier I Program Review Testing; EPA Program Review; and Tier II Testing.

Tier I HAPs Testing consisted of endpoint testing conducted by inhalation exposure for acute toxicity, with bronchoalveolar lavage (BAL) and histopathology, and acute neurotoxicity. The Tier I Program Review Testing consisted of studies to develop PK/MECH data, analyze glutathione metabolism, and perform model simulation. These studies were conducted to extend the computational dosimetry model of D'Souza et al. (1987, 1988; Refs. 1 and 2) to improve the model's application to the specific health effects endpoints for EDC listed in the ECA. The studies also enabled EPA to validate the model and verify the model's ability to adequately perform quantitative route-to-route extrapolations of dose response. Further description of the Tier I HAPs Testing and the Tier I Program Review Testing is provided in the **Federal Register** of September 5, 2006 (71 FR 52329). That notice, as well as the final study reports, can be accessed in the docket (EPA–HQ–OPPT–2003–0010) as explained in Unit I.B.

As specified in the ECA, the EPA program review is required before the Tier II Testing segment is undertaken. In the **Federal Register** of September 5, 2006 (71 FR 52329), EPA announced that it was conducting the program review component of the ECA for EDC, and solicited public comment on data received under the Tier I Program Review Testing segment of the ECA. Comments were to inform EPA's decision on whether or not additional data and/or model development were needed before Tier II Testing and computational route-to-route dosimetry modeling extrapolations can proceed for the Tier II endpoints listed in the ECA for EDC.

B. What were the Public Comments on the Tier I Program Review Testing for EDC?

EPA received two public comments in response to its solicitation for comments on the Tier I Program Review Testing. Comments from People for the Ethical Treatment of Animals (PETA) were on behalf of themselves and the following organizations: The Physicians' Committee for Responsible Medicine, the Humane Society of the United States, the Doris Day Animal League, and Earth Island Institute. PETA expressed support for the use of PBPK modeling to limit additional animal testing through the use of route-to-route extrapolation to existing studies. However, PETA also stated that they disagreed that additional Tier II tests (i.e., for reproductive effect or subchronic neurotoxicity) are needed; contending that existing studies for these effects are adequate. EPA disagrees, and its basis for requiring this additional testing is discussed in previous **Federal Register** documents, cited in Unit II.A. A second comment, from a private citizen, was focused on opposition to the manufacture of chlorine compounds in general, including EDC, and not the testing program.

C. What are the Conclusions of the EPA Tier I Program Review Testing for EDC?

The companies have completed the Tier I and Tier I Program Review testing segments of the ECA for EDC. The companies have also examined additional PBPK models and other available information in order to more fully update the model developed by D'Souza et al., 1987, 1988; as specified in the ECA agreement. The results of this work, the updated model, and model simulations have been discussed with EPA (Refs. 3 through 6) and have also been recently published as a peer-reviewed article in the scientific literature (Ref. 7). It is EPA's conclusion that the PBPK model developed by the test sponsors under the EDC ECA is acceptable for route-to-route extrapolations and that Tier II testing and extrapolation reporting can proceed as per the schedule set forth below (Ref. 8). Specifically, EPA concludes that:

1. The PK/MECH data report and Tier I toxicity studies have been conducted in accordance with the protocols and specifications as described in Appendix C of the ECA.
2. The available study records are sufficient to allow an evaluation of the quality of the studies performed.
3. The EDC PBPK model is appropriately chemical-specific, and suitably based on the current understanding of the kinetics of EDC.
4. The species, dose level, exposure regimens, and vehicles used are relevant for the toxicity data that are the object of the Tier II extrapolations.
5. The Tier I Program Review PK/MECH data, along with additional data, show that periodicity was demonstrated and that the various data sets bearing on the issue of periodicity can be properly

interpreted and managed in the studies that support the model.

6. Refinements of the model related to absorption, tissue distribution, and metabolism were accomplished, or suitably explained, including the role of extrahepatic metabolism as it impacts the model dose metrics and route-to-route extrapolation; appreciably improving prior PBPK models of EDC.

It is EPA's decision that the HAP Task Force can proceed with the Tier II Testing under the schedule set forth in Table 1. of this **Federal Register** document.

TABLE 1.—REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR EDC

Testing segment	Required testing	Test standard	Deadline for final report[1] (months)
. Tier II testing and/or extrapolation reporting	Subchronic toxicity route-to-route extrapolation of dose-response (oral Tier II testing to inhalation) of a study reported by Daniel, et al., (1994)	ECA appendix C.2 and C.6	12
.	Subchronic neurotoxicity (oral)	40 CFR 799.9620 (as annotated in ECA appendix D.2)	18
.	Subchronic neurotoxicity route-to-route extrapolation of dose-response (oral Tier II testing to inhalation)	ECA appendix C.3 and C.6	21
.	Reproductive toxicity (oral)	40 CFR 799.9380 (as annotated in ECA appendix D.3)	25
.	Reproductive toxicity route-to-route extrapolation of dose-response (oral data to inhalation, including Tier II testing and extant studies reported by Alumot, et al., (1976), Rao, et al., (1980), and Lane, et al., (1982))	ECA appendix C.4 and C.6	28

[1]Number of months after the date of publication of this **Federal Register** document, which announces that EPA has concluded the EPA Program Review, when the final report is due. In addition, every 6 months from the effective date of the Order until the end of the ECA testing program, interim reports describing the status of all testing to be performed under this ECA must be submitted by the Companies to EPA.

III. References

1. D'Souza, R.W., Francis, W.R., Bruce R.D., and Andersen, M.E. Physiologically based pharmacokinetic model for ethylene dichloride and its application in risk assessment. P. 286–301, In: Pharmacokinetics in Risk Assessment. National Academy Press. Washington, D.C. (1987).

2. D'Souza, R.W., Francis, W.R., and Andersen, M.E. Physiological model for tissue glutathione depletion and increased resynthesis after ethylene dichloride exposure. Journal of Pharmacology and Experimental Therapeutics. 245(2):563–568. (1988).

3. EPA, Office of Prevention, Pesticides and Toxic Substances, Chemical Control Division. Letter from Jim Willis, Director, CCD to Dr. Peter Voytek, HAP Task Force. RE: EPA Tier I Program Review for EDC. January 10, 2007.

4. EPA and HAP Task Force. Technical Consultation Meeting on 1, 2-Ethylene Dichloride Program Review. February 12, 2007.

5. HAP Task Force. Letter from Peter E. Voytek, Manager, HAP Task Force to Jim Willis, Director, Chemical Control Division, Office of Pollution Prevention and Toxics, with Enclosure: Response to Issues Raised in EPA's Tier 1 Data Evaluation Meeting. May 23, 2007.

6. Sweeny, L. M. and Gargas, M.I. Physiologically based pharmacokinetic model development and simulations for ethylene dichloride (1,2-dichlorethane) in rats. Prepared by the Sapphire Group, Dayton Ohio for the HAP Task Force, Millwood, Virginia. Revised Draft Report. March 11, 2009.

7. Sweeny, L. M., Saghir, S. A., and Gargas, M.I. Physiologically based pharmacokinetic model development and simulations for ethylene dichloride (1,2-dichlorethane) in rats. Regulatory Toxicology and Pharmacology. 51:311–323. (2008).

8. EPA. Email from Rob Dewoskin, PhD, DABT, US EPA/NCEA (National Center for Environmental Assessment) to John Schaeffer. Review of Final report - EDC ECA Program Review Completion. April 22, 2009.

List of Subjects

Environmental protection, 1,2-Ethylene Dichloride, EDC, Hazardous chemicals.

Dated: July 10, 2009.

Jim Willis,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–17170 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD; FRL–8930–3]

Flexible Approaches to Environmental Measurement—The Evolution of the Performance Approach

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Assuring the quality of environmental measurements is essential to the implementation of the Environmental Protection Agency's (EPA's or the Agency's) environmental programs, both regulatory and voluntary. In an October 6, 1997, Notice of Intent (FRL–5903–2), the Agency outlined a ''Performance Based Measurement System (PBMS)'' concept

which was expected to ''* * * have the overall effect of improving data quality and encouraging advancement of analytical technologies.'' EPA has recently revisited the 1997 concept, gauged the Agency's progress towards achieving its goals, and redefined steps needed to ensure continued progress.

The Agency has determined that while specifying performance criteria in a manner that is independent of methods, techniques, or instruments may be possible, developing a single protocol for the validation of these measurements that could be applied to all measurements, including measurements made with techniques yet to be invented, may not be possible. Accordingly, EPA is introducing principles that reflect flexible approaches to environmental measurement. These principles capture the Agency's experience of the past ten years, set the stage for future progress in improving data quality, and encourage the advancement of environmental measurement technologies.

Key goals for this flexible approach are as follows: Increased emphasis on flexibility when choosing sampling and analytical approaches to meet regulatory requirements for measurements; development of processes for validation to confirm measurements meet quality requirements; increased collaboration with stakeholders to develop validation processes for new measurement technology; and timely assessment of new or modified technologies, methods, and procedures.

The purpose of this notice is to provide the public with an up-to-date communication on the Agency's progress to Flexible Measurement—The Evolution of the Performance Approach.

FOR FURTHER INFORMATION CONTACT: For specific information regarding this notice, contact Lara Autry, Environmental Protection Agency, Office of the Science Advisor, E243–05, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone number: 919–541–5544; fax number: 919–541–4261; e-mail address: *autry.lara@epa.gov*.

SUPPLEMENTARY INFORMATION: The Forum on Environmental Measurements (FEM) is a standing committee of senior EPA mangers established to develop policies to guide the EPA measurement community in validating and disseminating methods for environmental monitoring; for ensuring that monitoring studies are scientifically rigorous, statistically sound, and yield representative data; and for employing a quality systems approach that ensures that the data gathered and used by the Agency is of known and documented quality. The Forum was established to promote consistency and consensus within the EPA on measurement issues.

Historically, most EPA programs have specified required analytical methods to be used by the regulated community in the analysis of environmental samples for regulatory compliance purposes. EPA has published its methods in regulations and a number of compendia, such as ''Manual of Methods for Chemical Analysis of Water and Wastes'' and ''Methods for the Determination of Organic Compounds in Drinking Water.'' The requirement to use specific analytical methods for compliance purposes is one of several means for assuring appropriate consistency and reliability in environmental monitoring.

In certain instances, in order to provide regulated parties with the flexibility to use alternative methods, EPA programs have established administrative processes by which the public could submit a proposed method for Agency review and approval. Before alternative methods are used in regulatory compliance applications, EPA's regulations require that such methods be approved by the Agency through formal rulemaking.

In past instances, the approval processes have been lengthy. For example, in some cases, the approval process took several years to receive consent for a proposed method or method modification after the Agency completed its evaluation. The approach of specifying required methods and approving new methods was identified as a major barrier to using innovative monitoring technology. In order to address these concerns, EPA's former Environmental Monitoring Management Council (EMMC) established a work group of scientists representing EPA's Headquarters and Regional offices to consider the advisability for establishing a performance-based approach to specifying analytical testing requirements. Based on the work group's recommendations in 1997, the Agency announced its intent to incorporate the PBMS approach, to the extent feasible, into its programs.

At the same time, the Agency intended that PBMS would provide the regulated community with flexibility in conducting required environmental monitoring, expedite the use of new and innovative techniques, and result in less costly approaches to conducting required monitoring and measurements. Under PBMS, the Agency envisioned that this approach would continue to allow use of its current required methods as well.

EPA has revisited the 1997 concept, gauged the Agency's progress towards achieving its goals, and redefined steps needed to ensure continued progress. EPA has determined that while it may sometimes be possible to specify performance criteria in a manner that is independent of methods, techniques, or instruments, the development of a single protocol for validating these measurements that could be applied to all measurements, including measurement made with techniques yet to be invented, is simply not possible. Accordingly, EPA is introducing flexible approaches in environmental measurement. These flexible approaches capture the Agency's experience of the past ten years, set the stage for future progress in improving data quality, and encourage the advancement of environmental measurement technologies.

The key goals for the flexible approaches are as follows.

(1) Increase Emphasis on the Flexibility of Choosing Sampling and Analytical Approaches To Meet Regulatory Requirements for Measurements

Setting measurement requirements begins with indentifying goals and considering such factors as action levels, technology performance, mandates, and/or limitations of the program or project. These goals may be applied broadly across a program and established by a program office, or may be specific to a project or permit. Goals are translated into measurement requirements, which may take a variety of forms. In some applications, a general requirement on accuracy may be present; while in others, measurement requirements may be coupled to a technology, method, or procedure (*e.g.,* criteria for evaluating modifications to published reference methods).

The Agency recognizes that some of its measurement quality requirements that appear throughout its regulations may be more specific than necessary, and it will strive to make these requirements more flexible as time and resources permit.

(2) Develop Processes for Validations That Confirm That Measurements Meet Quality Requirements

A validation process should provide evidence that measurement quality requirements are achieved. According to ISO 17025,[1] ''validation is the confirmation by examination and the provision of objective evidence that the particular requirements for specific

[1] ISO/IEC 17025 General requirements for the competence of testing and calibration laboratories.

intended use are fulfilled.'' Validation is typically performed in two phases. The first phase provides evidence on general performance of a measurement system for a range of materials that define a matrix class; the second phase (often called ''verification''), demonstrates that the requirements for a specific use are met. Both phases are important for scientific and legal defensibility.

More general measurement requirements call for more specific validation processes. A general requirement on accuracy that is specified in a manner independent of technique, method, or instrument should be accompanied by detailed validation for each method of measurement. Conversely, a measurement quality requirement to use a particular procedure can require essentially no validation, as a detailed procedure often includes a complete specification of required quality control activities.

EPA intends to develop processes for validation that allow for an appropriate choice of specificity. For some applications, validation processes may continue to use defined procedures with ongoing quality control. For other applications, validation processes may place emphasis on greater flexibility and include verification that the requirements for a specific use are achieved.

(3) Increase Collaboration With Stakeholders To Develop Validation Processes for New Measurement Technology

Validation required for new technology may be difficult to specify in advance due to the wide variety of performance issues which may be encountered. The Agency anticipates that developing validation processes for applications of new technology will require collaborating with stakeholders to ensure timely development of these processes. During this process, the Agency expects to continue to play a key role in the validation development.

(4) Timely Assessment of New or Modified Technologies, Methods, and Procedures

In the event that the measurement requirements in a program are specific to a technology, method, or procedure, the Agency is committed to the assessment of proposed alternatives to these requirements and to rendering timely decisions of these alternatives when approval is sought.

Today's notice is not a formal agency action, but a statement of the Agency's approach to environmental measurement flexibility. It creates no rights enforceable by any party in litigation with the United States.

Dated: June 30, 2009.

Kevin Teichman,

Acting EPA Science Advisor.

[FR Doc. E9–17402 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0481; FRL–8429–8]

Proposed Stipulated Injunction Involving Pesticides and Eleven Species Listed as Threatened or Endangered Under the Endangered Species Act; Notice of Availability; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of July 1, 2009, announcing the availability of a proposed Stipulated Injunction that would establish a series of deadlines for the Agency to make ''effects determinations'' and initiate consultation, as appropriate, with the U.S. Fish and Wildlife Service for certain pesticides in regard to one or more of 11 species found in the greater San Francisco Bay area that are listed as endangered or threatened under the Endangered Species Act. The proposed Stipulated Injunction, if entered by the Court, would resolve a lawsuit brought against EPA by the Center for Biological Diversity in the United States District Court for the Northern District of California. The July 1, 2009 notice provided a 15–day comment period which closed on July 16, 2009. This document reopens the comment period for 30 days.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0481, must be received on or before August 17, 2009.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Arty Williams, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7695; e-mail address: *williams.arty@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 1, 2009 (74 FR 31427) (FRL–8425–1), EPA issued a notice in the **Federal Register** opening a 15–day comment period on a proposed Stipulated Injunction. The proposed Stipulated Injunction if entered by the United States District Court for the Northern District of California, would resolve a lawsuit brought against EPA by the Center for Biological Diversity (*Center for Biological Diversity* v. *EPA*, No. C 07–02794 JCS (N.D.Cal.)).

The original comment period closed on July 16, 2009. However, based on comments received, EPA is reopening the comment period for 30 days to allow the public additional time to develop meaningful comments on the proposed Stipulated Injunction. Comments must be received on or before August 17, 2009.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the July 1, 2009 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Endangered species.

Dated: July 15, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E9–17396 Filed 7–17–09; 4:15 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OPP–2009–0484; FRL–8425–8]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 21, 2009.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the pesticide petition number (PP) for the petition of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug,

and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance Exemptions

1. *PP 7E7188*. (EPA–HQ–OPP–2009–0407). Sellew and Associates LLC., 84 Shadybrook Lane, Carlisle, MA 01741, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial pesticide, Trichoderma hamatum Isolate 382, in or on all food commodities. The petitioner believes no analytical method is needed because Sellew and Associates LLC., is proposing to establish an exemption from the requirement of a tolerance without numerical limitation. For this reason an analytical method for detecting and measuring levels of the pesticide residue is considered unnecessary. Contact: Ann Sibold, (703) 305–6502, *sibold.ann@epa.gov*.

2. *PP 9F7558*. (EPA–HQ–OPP–2009–0440). Technology Sciences Group Inc., 1150 18th St., NW., Suite 1000, Washington, DC 20036, acting on behalf of Biomor Israel Ltd., PO Box 81, Qatzrin 12900, ISRAEL, proposes to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide, Tea Tree Oil, in or on all food commodities. The petitioner believes no analytical method is needed because Biomor Israel Ltd., is proposing to establish an exemption from the requirement of a tolerance without numerical limitation. For this reason an analytical method for detecting and measuring levels of the pesticide residue is considered unnecessary. Contact: Raderrio Wilkins, (703) 308–1259, *wilkins.raderrio@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 15, 2009.

W. Michael McDavit,

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

[FR Doc. E9–17401 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0365; FRL–8425–4]

Azinphos-methyl; Notice of Receipt of Request for Label Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a June 18, 2009 request by azinphos-methyl (AZM) registrants to amend their registrations to change the rate reductions outlined in the November 16, 2006 final decision for some of the remaining uses of AZM, and to extend the use of aerial application on blueberries in Michigan through the end of the AZM phase out in 2012. On November 16, 2006, EPA issued a final decision to phase out all uses of AZM not later than September 30, 2012 and to require certain interim risk mitigation measures through label changes. Risk mitigation measures in the final decision include buffer zones around water bodies and occupied structures, application rate reductions, and stewardship programs. The request by the registrants is a request to change some of the rate reductions and certain application practices that have been required through the end of the AZM phaseout; the registrants have not requested to extend the use of AZM beyond the September 30, 2012 cancellation date for the remaining uses of AZM.

DATES: Comments must be received on or before September 21, 2009.

ADDRESSES: Submit your comments identified by the docket identification (ID) number EPA–HQ–OPP–2009–0365, by one of the following methods:

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

Instructions: Direct your comments to the docket ID number EPA–HQ–OPP–2009–0365. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Chemical Review Manager, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8589; fax number: (703) 308–7070; e-mail address: *myers.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests for AZM Label Amendments

AZM is an organophosphate insecticide that was first registered in the United States in 1959. On November 16, 2006, EPA issued a determination that due to farm worker and ecological risks all remaining uses of AZM will be phased out by 2012. The AZM registrants, at the request of EPA, submitted registration amendment and voluntary cancellation requests to terminate certain uses in 2007 and 2009 and cancel all remaining AZM product registrations in 2012, subject to certain terms and conditions. A cancellation order for the remaining uses of AZM was published in the **Federal Register** on February 20, 2008 (73 FR 9328) (FRL–8349–8). A correction of typographical errors in the February 20, 2008 **Federal Register** notice was issued on March 26, 2008 (73 FR 16006) (FRL–8355–1). Subject to the terms and conditions described in Unit II. of the February 20, 2008 notice, the AZM product registrations were cancelled and amended as follows: Use of AZM products on Brussels sprouts and nursery stock was prohibited as of September 30, 2008. Use of AZM products on walnuts, almonds, and pistachios is prohibited effective October 30, 2009. All AZM products currently held by registrants are cancelled effective September 30, 2012 (ending use on apples/crabapples, blueberries, cherries, pears, and parsley). In addition to the aforementioned use deletions and product cancellations, the use of AZM was increasingly limited during the phase out period through application rate reductions and other label restrictions, including buffer zones around water bodies and occupied structures. The application rate reductions required in the AZM Final Decision document are located in Table 1.

TABLE 1.—RATE REDUCTIONS REQUIRED IN THE AZM FINAL DECISION DOCUMENT, DATED NOVEMBER 16, 2006.

Crop	Year	Rate
Apples, Crabapples	2007	4.0 lbs ai/A per year
	2008, 2009	3.0 lbs ai/A per year
	2010	2.0 lbs ai/A per year
	2011, 2012	1.5 lbs ai/A per year
Pears	2007, 2008	3.0 lbs ai/A per year
	2009, 2010	2.0 lbs ai/A per year
	2011, 2012	1.5 lbs ai/A per year
Cherries	2007, 2008, 2009	1.5 lbs ai/A per year
	2010, 2011, 2012	0.75 lbs ai/A per year
Blueberries	2007	1.5 lbs ai/A per year
	2008, 2009	1.25 lbs ai/A per year
	2010, 2011, 2012	0.75 lbs ai/A per year
	After September 30, 2009 aerial application on blueberries is prohibited.	

The additional label changes required are described in the document ''Final Decisions for the Remaining Uses of Azinphos-methyl, US EPA, November 16, 2006,'' located in docket EPA–HQ–OPP–2005–0061.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from registrants to amend registrations to alter the rate reductions outlined in the November 16, 2006 Final Decision for the Remaining Uses of AZM, and to extend the use of aerial application on blueberries in Michigan through the end of the AZM phase out. The registrants have requested that for apples/crabapples, blueberries, cherries, and pears that growers be allowed to use higher applications rates than originally required in the Final Decision document of November 16, 2006. Additionally, registrants have requested that the aerial use of AZM on blueberries, currently scheduled to be prohibited starting January 1, 2010, be allowed through the end of the phaseout (September 30, 2012). The request by the registrants would change some of the rate reductions and certain application practices that have been required through the end of the AZM phaseout; the registrants have not requested to extend use of AZM beyond the September 30, 2012 cancellation date for the remaining uses of AZM. The changes requested by the registrants are listed in the Table 2.

TABLE 2.—REQUESTED AZM LABEL CHANGES AS DESCRIBED IN THE JUNE 18, 2009 REGISTRANT SUBMISSION

Crop	Year	Rate
Apples, Crabapples	2010, 2011, 2012	2.0 lbs ai/A per year
Pears	2010, 2011, 2012	2.0 lbs ai/A per year
Cherries	2010, 2011, 2012	1.5 lbs ai/A per year
Blueberries	2010, 2011, 2012	1.0 lbs ai/A per year
	Maintain aerial application on blueberries through September 30, 2012.	

The Agency is requesting comment on the registrant submission to amend registrations. The registrant request letter is in the docket for comment, along with an EPA-produced document with considerations for commenters on the registrant request. The Agency welcomes comments from all stakeholders, as well as any new information on human health or environmental risks not previously considered.

List of Subjects

Environmental protection, Pesticides and pests, Azinphos-methyl.

Dated: July 15, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–17398 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0503; FRL–8427–2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel their registrations of products containing the pesticides disulfoton and methamidophos. The requests would terminate the last disulfoton and methamidophos products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before August 21, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number: Disulfoton – EPA–HQ–OPP–2009–0054; Methamidophos – EPA–HQ–OPP–2008–0842, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0054 for disulfoton and to docket ID number EPA–HQ–OPP–2009–0842 for methamidophos. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket

Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Product Manager	Pesticide	Office location for mail and Special Courier	Telephone Number	Email Address
Eric Olson	Methamidophos	Special Review and Registration Division, Office of Pesticide Programs, Environmental Protection Agency 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	(703) 308–8067	*olson.eric@epa.gov*
Eric Miederhoff	Disulfoton	Special Review and Registration Division, Office of Pesticide Programs, Environmental Protection Agency 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	(703) 347–8028	*miederhoff.eric@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel Registrations

This notice announces receipt by EPA of requests from registrants Bayer CropScience, Bayer Environmental Science, Bayer Advanced (these registrants are collectively referred to henceforth as ''Bayer''), and Amvac Chemical to cancel six disulfoton Section-3 product registrations, five methamidophos Section-3 product registrations, thirteen disulfoton Special Local Need registrations, and seventeen methamidophos Special Local Need registrations. Disulfoton is an organophosphate insecticide registered for use on asparagus, beans, broccoli, Brussels sprouts, cabbage, cauliflower, cotton, coffee beans, lettuce, radish grown for seed, Christmas trees, Easter lilies, and residential ornamentals. Methamidophos is an organophosphate insecticide registered for the control of a broad spectrum of insects on cotton, potato, tomato, and alfalfa grown for seed. Bayer will amend its product registrations by terminating the use of methamidophos on cotton as of September 30, 2009. Existing stocks labeled for use on cotton may be sold and distributed by persons other than the registrant until July 31, 2010. Existing stocks labeled for use on cotton may be used until September 30, 2010, provided that such use complies with the EPA-approved label and labeling of the product.

In letters dated June 16, 2009 and June 18, 2009, Bayer requested EPA cancel its remaining methamidophos and disulfoton pesticide product registrations identified in Table 1 of this notice. In a letter dated May 5, 2009, Amvac Chemical Corp. requested EPA cancel its disulfoton pesticide product registration identified in Table 1 of this notice. Cancelling these pesticide products will result in the termination of all remaining disulfoton and methamidophos products registered for use in the United States.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to cancel disulfoton and methamidophos product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The disulfoton and methamidophos registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30–days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations.

TABLE 1.—DISULFOTON AND METHAMIDOPHOS PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Active Ingredient
264-723	Di-Syston 15% Granular	Disulfoton
264-725	Disulfoton Technical	Disulfoton
264-729	Monitor 4	Methamidophos
264-734	Disulfoton 8 Emulsifiable Systemic Insecticide	Disulfoton
264-741	Monitor Technical	Methamidophos
264-744	Monitor 60% Concentrate	Methamidophos
264-1020	Monitor 4 Spray	Methamidophos
264-1021	Valent Monitor Technical	Methamidophos
432-1286	Systemic 2 in 1 Rose Care 10-10-10 Rose Food with Insecticide	Disulfoton
5481-8989	Terraclor Super-X Soil Fungicide With Di-Syston	Disulfoton
72155-49	Flower Rose and Shrub Care	Disulfoton
AR970004	Monitor 4	Methamidophos
CA050010	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
CA780163	Monitor 4	Methamidophos
CA810044	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
CA840192	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
CA980013	Monitor 4	Methamidophos
DE910002	Monitor 4	Methamidophos
FL800046	Monitor 4	Methamidophos
FL900003	Monitor 4	Methamidophos
GA900001	Monitor 4	Methamidophos
IN790001	Monitor 4	Methamidophos
LA040011	Monitor 4 Liquid Insecticide	Methamidophos
MD910009	Monitor 4	Methamidophos
MI060002	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
NC860005	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
NC880001	Di-Syston 15% Granular	Disulfoton
NC890007	Monitor 4	Methamidophos
NC920011	Di-Syston 15% Granular	Disulfoton

TABLE 1.—DISULFOTON AND METHAMIDOPHOS PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Active Ingredient
NJ960010	Monitor 4	Methamidophos
OH790008	Monitor 4	Methamidophos
OR040030	Di- Syston 8 Emulsifiable Systemic Disulfoton Insecticide	Disulfoton
OR050024	Di-Syston Disulfoton 8 Emulsifiable Systemic Insecticide	Disulfoton
SC780007	Monitor 4 Liquid Insecticide	Methamidophos
TN060002	Monitor 4 Liquid Insecticide	Methamidophos
TX910016	Monitor 4	Methamidophos
VA910005	Monitor 4	Methamidophos
TX860007	Di-Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
WA040015	Di-Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
WA040028	Di-Syston 15% Granular	Disulfoton
WA920026	Di-Syston 8 Emulsifiable Systemic Insecticide	Disulfoton

Table 2 of this unit includes the names and addresses on record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company Number	Company Name and Address
264	Bayer CropScience, 2 T.W. Alexander Drive Research Triangle Park, North Carolina 27709
432	Bayer Environmental Science, 2 T.W. Alexander Drive PO Box 12014, Research Triangle Park, North Carolina 27709
5481	Amvac Corporation 4695 Macarthur Court, Suite 1250, Newport Beach, California 92660–1706
72155	Bayer Advanced 2 T.W. Alexander Drive, PO Box 12014, Research Triangle Park, North Carolina 27709

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Disulfoton and Methamidophos

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 21, 2009. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to these requests for cancellation of disulfoton and methamidophos product registrations, EPA proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1 or 2 in Unit III:

Bayer may sell and distribute such existing stocks for registrations 264–725, 264–729, 264–734, 264–741, 264–744, 264–1020, 264–1021, and 432–1286 until December 31, 2010. Bayer may sell and distribute such existing stocks for registration 264–723 and 72155–49 until June 30, 2011. Amvac Chemical Corp. may sell and distribute such existing stocks for registration 5481–8989 until December 31, 2010.

If the request for voluntary cancellation is granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of canceled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the canceled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described,

the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 10, 2009.

R. McNally,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–17171 Filed 7–21–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0135; FRL–8424–5]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by January 19, 2010 or August 21, 2009 for registrations for which the registrant requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than January 19, 2010 or August 21, 2009, whichever is applicable. Comments must be received on or before January 19, 2010 or August 21, 2009, for those registrations where the 180–day comment period has been waived.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2009–0135, 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. Written Withdrawal Request, Attention: John Jamula, Information Technology and Resources Management Division (7502P).
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0135. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resource Management Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although, this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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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. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 113 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000100 CA–98–0021	Zephyr 0.15 EC	Abamectin
000239–02651	Bug-Geta Snail & Slug Pellets 3	Metaldehyde
000264–00825	Proline 480 Sc Fungicide	Prothioconazole
000270–00350	Adams Animal Repellent Concentrate	Piperonyl butoxide
		Permethrin
		Pyrethrins
		2,5-Pyridinedicarboxylic acid, dipropyl ester
		MGK 264
000279–03326	Authority MTZ 45df Herbicide	Sulfentrazone
000352–00606	Dupont Staple Plus Herbicide	Metribuzin Pyrithiobac
		Glyphosate-isopropylammonium
000352–00620	Dupont Landmark 11 MP	Chlorsulfuron
		Sulfometuron
000352–00621	Dupont Landmark MP	Chlorsulfuron
		Sulfometuron
000352–00647	Dupont Landmark II Xp Herbicide	Chlorsulfuron
		Sulfometuron
000352–00655	Manex	Maneb
000352 ME–94–0008	Manex	Maneb
000352 OK–05–000	Dupont Finesse Grass & Broadleaf (mp) Herbicide	Chlorsulfuron
		Flucarbazone-sodium
000352 TX–04–0028	Dupont Finesse Grass & Broadleaf (mp) Herbicide	Flucarbazone-sodium
		Chlorsulfuron
000524–00390	Fallow Master Herbicide	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with 2-propanamine (1:1)
		Glyphosate-isopropylammonium
000538–00028	Turf Builder Plus 2	Mecoprop-P
		2-4,D

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000538–00033	Scotts Proturf 36-0-0 Fertilizer Plus Dicot Weed Control	Dicamba
		2-4,D
000538–00179	Scotts Turf Builder Plus 2 for Grass	2-4,D
		Mecoprop-P
000538–00186	Proturf Fertilizer Plus Dicot Weed Control III	2-4,D
		Mecoprop-P
		Dicamba
000769–00568	Stephenson Chemicals Fly Bait	Dichlorvos
000769–00625	Vapona Em-2	Dichlorvos
000769–00627	Smcp Vapona 2 Solution	Dichlorvos
000769–00628	SMCP Vapona Insecticide 50% Concentrated Solution	Mineral oil - includes paraffin oil from 063503
		Dichlorvos
000769–00629	Smcp Vapona Insecticide 90% Concentrated Solution	Dichlorvos
000769–00632	Smcp Vapona EM-4	Dichlorvos
000769–00640	Smcp Fly Killer Bait	Dichlorvos
000769–00643	SMCP Slug and Snail Bait Pellets	Metaldehyde
000769–00644	SMCP M/V Fog Solution	Dichlorvos
		Malathion
000769–00727	SMCP Vapona Insecticide 50% Concentrate Solution	Dichlorvos
000769–00795	Ddvp 50% Vapona Insecticide for Professional Pco Use	Dichlorvos
000769–00796	Superior DDVP #1 Vapona Insecticide Concentrate	Dichlorvos
000769–00797	Universal Quick-Tox Fog Spray	Piperonyl butoxide
		Pyrethrins
		Dichlorvos
000769–00798	Superior Ddvp #2 Vapona Insecticide Emulsifiable Conc.	Dichlorvos
000769–00821	Ul-5d 5% Vapona Insecticide	Dichlorvos
000769–00924	Drop Dead Ddvp Insecticide Fogger	Dichlorvos
001020–00005	Oakite Bactericide	Calcium hypochlorite
001663–00015	Grant's Ant Control	Arsenic oxide (As2O3)
001663–00031	Arsenic Trioxide Technical	Arsenic oxide (As2O3)
002217–00441	Exit Lawn Weed Killer contains Dicamba	2,4-D, dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
002217–00672	Gordon's Phenaban 801	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
002217–00673	Gordon's Phenaban 1001	2,4-D, dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
002217–00797	EH 1143 Herbicide	MSMA (and salts)
		MCPA, dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002686–00010	Hydri-San No.468	Phosphoric acid
		Dodecylbenzenesulfonic acid
003487–00026	Eagles-14 Diphacinone Rat Bait	Diphacinone
004822–00025	Raid Insect Spray Power Packed	Pyrethrins
		Piperonyl butoxide
		MGK 264
004822–00034	Raid Flying Insect Killer	MGK 264
		Pyrethrins
		Piperonyl butoxide
004822–00445	Raid Flea Killer Plus Cat Foam V	Pyrethrins
		Piperonyl butoxide
		MGK 264
004822–00459	Whitmire Liquid Pet Spray	Piperonyl butoxide
		MGK 264
		Pyrethrins
004822–00464	Whitmire Flea and Tick Spray No. 1	Piperonyl butoxide
		MGK 264
		Pyrethrins
005481–00067	Alco Ho No Mo Liquid	Cacodylic acid
		Cacodylic acid, sodium salt
005481–00227	DSMA Liquid Plus Surfactant	DSMA
005481–00228	MSMA 40 Plus Surfactant	MSMA (and salts)
005481–00229	MSMA 60 Plus Surfactant	MSMA (and salts)
005481–00230	MSMA 66 Concentrate	MSMA (and salts)
005481–00231	MSMA 80 Concentrate	MSMA (and salts)
005481–00318	Slugit	Metaldehyde
005905–00118	Helena 3lb Chlorate Defoliant-Desiccant	Sodium chlorate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
005905–00461	6 Lb. Sodium Chlorate Defoliant-Desiccant	Sodium chlorate
005905–00483	Helena 3.5 Lb. Liquid Copper Concentrate	Basic copper sulfate
005905–00520	Par F 70 Soluble Oil	Mineral oil - includes paraffin oil from 063503
005905–00524	Copper-Z 6/2 Granular Algicide	Copper sulfate pentahydrate
005905–00546	Sungro 455 Soluble Oil	Mineral oil - includes paraffin oil from 063503
005905–00547	435 Soluble Oil	Mineral oil - includes paraffin oil from 063503
005905 WA–98–0026	Omni Supreme Spray Insecticide-Miticide Liquid	Mineral oil - includes paraffin oil from 063503
007401–00023	Ferti-Lome Crabgrass and Dallis Grass Killer	MSMA (and salts)
007401–00166	Hi-Yield 10% Carbaryl Garden Dust	Carbaryl
007401–00192	Ferti-Lome Weed & Feed Special F/st.augustine, Bermuda	Simazine
007401–00246	Hi-Yield Super Decimate+surfactant	MSMA (and salts)
007401–00303	Hi-Yield (maneb) Lawn and Garden Fungicide	Maneb
007401–00366	Ferti-Lome Improved Bermuda Grass Weeder	MSMA (and salts)
		Cacodylic acid, sodium salt
008867–00039	Shed-A-Leaf 'l'	Sodium chlorate
010806–00106	Contact Roach Baits	Propoxur
011885–00012	Master Mix Blue Death-D Rat & Mouse Bait	Diphacinone
011885–00015	Master Mix Blue Death-D Rat & Mouse Bait Hide-A-Pack	Diphacinone
012455–00068	Contrac Mouse Bait Station	Bromadiolone
019713–00344	Ddvp 7% Total Release Aerosol	Dichlorvos
033116–00003	Lilly Miller Slug & Snail Spray	Metaldehyde
033657–00016	Dinotefuran 20% Turf, Ornamental and Vegetable Trans.	Dinotefuran
034704–00401	Clean Crop C-O-C-S Zinc 24-24	Copper oxychloride sulfate
034704–00685	Simazine 80w Herbicide	Simazine
042519–00004	Cacodylate 3.25	Cacodylic acid
		Cacodylic acid, sodium salt
042519–00008	Sodium Cacodylate Solution	Cacodylic acid
		Cacodylic acid, sodium salt
042519–00010	Leaf-All	Cacodylic acid, sodium salt
		Cacodylic acid
042750–00042	Albaugh Dicamba Technical	Dicamba
053883–00114	DGA 4 Herbicide	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with 2-(2-aminoethoxy)ethanol (1:1)
053883–00143	Dicamba-Zine	Atrazine
		Benzoic acid, 3,6-dichloro-2-methoxy-, potassium salt

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
055272–00015	Basic Copper 50W	Basic copper sulfate
055272–00016	Basic Copper 4l	Basic copper sulfate
060061–00038	Woolsey Tradewinds Anti-Fouling Bottom Paint 708 Harbor	Cuprous oxide
		Copper hydroxide
060061–00039	Woolsey Neptune Anti-Fouling 712 Royal Blue	Cupric oxide
		Copper hydroxide
060061–00040	Woolsey Neptune Anti-Fouling 714 Royal Green	Copper hydroxide
		Cuprous oxide
061282 OR–05–0010	Prozap Zinc Phosphide Pellets	Zinc phosphide (Zn3P2)
062719–00513	Widematch* M	Clopyralid
		MCPA, 2-ethylhexyl ester
		Fluroxypyr 1-methylheptyl ester
062719 CA–94–0018	Lorsban 4E-HF	Chlorpyrifos
062719 CA–94–0024	Lorsban-4E	Chlorpyrifos
062719 CA–97–0007	Lorsban-4E	Chlorpyrifos
062719 CA–98–0010	Lorsban-4E	Chlorpyrifos
062719 CO–99–0009	Lorsban-4e	Chlorpyrifos
062719 ID–01–0001	Lorsban-4E	Chlorpyrifos
062719 ID–01–00041	Lorsban-4E	Chlorpyrifos
062719 MS–94–0005	Lorsban 4E-HF	Chlorpyrifos
062719 OR–00–0029	Lorsban-4E	Chlorpyrifos
062719 WA–03–0038	Dithane Df Rainshield	Mancozeb
066222 CO–04–0001	Bumper 41.8 EC (propiconazole) Fungicide	Propiconazole
066222 ID–03–0013	Bumper 41.8 EC (propiconazole) Fungicide	Propiconazole
066222 ID–03–0014	Bumper 41.8 EC (propiconazole) Fungicide	Propiconazole
066222 KS–04–0001	Bumper 41.8 EC (propiconazole) Fungicide	Propiconazole
066222 MN–03–0004	Bumper 41.8 EC (propiconazole) Fungicide	Propiconazole

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
066222 ND–03–0004	Bumper 41.8 EC (propiconazole) Fungicide	Propiconazole
066330 OR–00–0006	Captan 50 Wettable Powder	Captan
067517–00065	Bromethalin Liquid Concentrate 1.5%	Bromethalin
070506–00195	Cuprofix Technical	Basic copper sulfate
070506–00196	Cuprofix Disperss	Basic copper sulfate

A request to waive the 180–day comment period has been received for the following registrations:

000769–00568; 000769–00625; 000769–00627;000769–00628; 000769–00629; 000769; 00632; 000769–00640; 000769–00643; 000769–00644; 000769–00727; 000769 00795; 000769–00796; 000769–00797; 000769–00798; 000769–00821; 000769–00924; 001020–00005; 005481–00067; 005481–00227; 005481–00228; 005481–00229; 005481–00230; 005481–00231; 005905–00118; 005905–00461; 005905–00483; 005905–00520; 005905–00524; 005905–00546; 05905–00547; 007401–00023; 007401–00246; 007401–00303; 007401–00366; 007401–00166; 019713–00344; 033116–00003; 034704–00401; 042519–00004; 042519–00008; 042519–00010; 055272–00015; 055272–00016; 62719–00513; 070506–00195; 070506–00196; WA–98–0026

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, PO Box 18300, Greensboro, NC 27419–8300.
000239	The Scotts Co., d/b/a The Ortho Group, PO Box 190, Marysville, OH 43040.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000270	Farnam Companies, Inc., d/b/a Central Life Sciences, 301 W. Osborn Rd., Phoenix, AZ 85013.
000279	FMC Corp. Agricultural Products Group, Attn: Michael C. Zucker, 1735 Market St, Rm 1978, Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & Co., Inc. (s300/419), Attn: Manager, US Registration, 1007 Market Street, Wilmington, DE 19898–0001.
000524	Monsanto Co., Agent For: Monsanto Co., 1300 I Street, NW., Suite 450 E., Washington, DC 20005.
000538	Scotts Co., The, 14111 Scottslawn Rd., Marysville, OH 43041.
000769	Value Gardens Supply, LLC, d/b/a Value Garden Supply, PO Box 585, Saint Joseph, MO 64502.
001020	Chemetall US, Inc., 675 Central Ave., New Providence, NJ 07974–0007.
001663	Grant Laboratories Inc., 14688 Washington Ave., San Leandro, CA 94578.
002217	PBI/Gordon Corp., PO Box 014090, Kansas City, MO 64101–0090.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
002686	Hydrite Chemical Co., 300 N. Patrick Blvd., Brookfield, WI 53045.
003487	Bacon Products Co., Inc., d/b/a Bacon Products Corp., PO Box 22187, Chattanooga, TN 37422–2187.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005481	Amvac Chemical Corp., d/b/a Amvac, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660–1706.
005905	Helena Chemical Co., 7664 Moore Rd., Memphis, TN 38120.
007401	Mandava Associates, LLC, Agent For: Voluntary Purchasing Groups, Inc., 6860 N. Dallas Pkwy., Suite 200, Plano, TX 75024.
008160	D.B.K., Inc., 789 South Christensen Rd., Coolidge, AZ 85228.
008867	Jimmy Sanders Inc., PO Box 1169, Cleveland, MS 38732.
010806	Contact Industries, Div. of Safeguard Chemical Corp., 411 Wales Ave, Bronx, NY 10454.
011885	ADM Alliance Nutrition, Inc., PO Box C1, Quincy, IL 62305.
012455	Bell Laboratories, Inc., 3699 Kinsman Blvd., Madison, WI 53704.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
019713	Drexel Chemical Co., PO Box 13327, Memphis, TN 38113–0327.
033116	Registrations By Design, Inc., Agent For: Central Garden & Pet d/b/a Lilly Miller, 118 1/2 E. Main St., Suite 1, Salem, VA 24153–3805.
033657	Landis International, Inc., Agent For: Mitsui Chemicals, Inc., PO Box 5126, Valdosta, GA 31603–5126.
034704	Loveland Products, Inc., Attn: Mark R. Trostle, PO Box 1286, Greeley, CO 80632–1286.
042519	Luxembourg-Pamol, Inc., 5100 Poplar Ave., Suite 2700, Memphis, TN 38137.
042750	Albaugh Inc., 1525 Ne 36th Street, Ankeny, IA 50021.
053883	Control Solutions, Inc., 5903 Genoa-Red Bluff, Pasadena, TX 77507–1041.
055272	Ensayo Consulting, Agent For: Ingenieria Industrial Sa De Cv, 2838 Ulster St., Denver, CO 80238.
060061	Kop-Coat, Inc., 436 Seventh Ave., Pittsburgh, PA 15219.
061282	Hacco, Inc., 110 Hopkins Drive, Randolph, WI 53956–1316.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2E, Indianapolis, IN 46268–1054.
066222	Makhteshim-Agan of North America Inc., 4515 Falls of Neuse Rd, Suite 300, Raleigh, NC 27609.
066330	Arysta Lifescience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
067517	Virbbac AH, Inc., Agent For: PM Resources Inc., PO Box 162059, Fort Worth, TX 76161.
070506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19406.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before January 19, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 13, 2009.

Kathryn Bouvé,

Acting Director, Information Technology and Resources Management Division. Office of Pesticide Programs.

[FR Doc. E9–17315 Filed 7–21–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0485; FRL–8425–9]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before August 21, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0485, by one of the following methods:

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

for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0485. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511P), listed in the table in this unit:

Regulatory Action Leader	Telephone Number and E-mail Address	Mailing Address	File Symbol
Ann Sibold	(703) 305–6502 sibold.ann@epa.gov	Biopesticides and Pollution Prevention Division (7511P), Office of Pesticides, Environmental Protection Agency, 1200 Pennsylvania, Ave., NW., Washington, DC 20460–0001	74205–GI
Chris Pfeifer	(703) 308–0031 pfeifer.chris@epa.gov	Biopesticides and Pollution Prevention Division (7511P), Office of Pesticides, Environmental Protection Agency, 1200 Pennsylvania, Ave., NW., Washington, DC 20460–0001.	69592–EL
Raderrio Wilkins	(703) 308–1259 wilkins.raderrio@epa.gov	Do.	86182–E
Raderrio Wilkins	(703) 308–1259 wilkins.raderrio@epa.gov	Do.	86182–R

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions

or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

File Symbol: 74205-G. *Applicant*: Sellew and Associates LLC, 84 Shadybrook Lane, Carlisle, MA 01741. *Product name*: Trichoderma hamatum isolate 382. *Active ingredient*: Trichoderma hamatum isolate 382 microbial pesticide at 0.9%. *Proposal classification/Use*: in or on potting mixes/container mixes for the production of ornamentals and vegetable bedding plants. (A. Sibold).

File Symbol: 69592-EL. *Applicant*: AgraQuest, Inc., 1540 Drew Avenue, Davis, CA 95618–6320. *Product name*: QRD 420 (ECANA Mimic). *Active ingredient*: Biochemical insecticide and acaricide Extract of Chenopodium *ambrosioides* near *ambrosioides* Mimic (ECANA Mimic) – a blend of components intended to replicate Extract of Chenopodium *ambrosioides* near *ambrosioides* at 25%. *Proposal classification/Use*: A biochemical insectide and acaricide for use on agricultural crops and for use on plants in Greenhouses and Nurseries. (J. Pfeifer).

File Symbol: 86182–E. *Applicant*: Technology Sciences Group Inc., 1150 18th Street, NW. Suite 1000 Washington DC 20036 acting on behalf of Biomor Israel Ltd. PO Box 81, Qatzrin 12900, ISRAEL. *Product name*: Tea Tree Oil Technical. *Active ingredient*: Biochemical pesticide Tea Tree Oil at 100%. *Proposal classification/Use*: A biochemical pesticide for manufacturing into an end use pesticide product. (R. Wilkins)

File Symbol: 86182–R. *Applicant*: Technology Sciences Group Inc., 1150 18th Street, NW. Suite 1000, Washington DC 20036 acting on behalf of Biomor Israel Ltd. PO Box 81, Qatzrin 12900, ISRAEL. *Product name*: Tea Tree Oil Technical. *Active ingredient*: Biochemical pesticide Tea Tree Oil at 23.80%. *Proposal classification/Use*: A biochemical pesticide to prevent and control powdery mildew, downy mildew, early and late blight, botrytis, rust apple scab, and black sigatoka. (R. Wilkins).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 15, 2009.

W. Michael McDavit,

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

[FR Doc. E9–17403 Filed 7–21–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0361; FRL–8427–9]

Registration Review; Glyphosate Docket Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a registration review docket for the pesticide listed in the table in Unit III.A. With this document, EPA is opening the public comment period for this registration review. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. Previously, docket number EPA–HQ–OPP–2007–0147 was announced as open for review and comment on June 24, 2009, on the registration review case of glyphosate. However, this was an inaccurate docket number reference for this pesticide chemical case. Therefore, the correct docket number for the registration review case of glyphosate is EPA–HQ–OPP–2009–0361.

DATES: Comments must be received on or before September 21, 2009.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

Instructions: Direct your comments to the docket ID number listed in the table in Unit III.A. for the pesticide you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM

you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its review of the pesticide identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registration identified in the table in this unit to assure that it continues to satisfy the FIFRA standard for registration—that is, it can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening a registration review docket for the case identified in the following table.

TABLE—REGISTRATION REVIEW DOCKET OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Glyphosate 0178	EPA–HQ–OPP–2009–0361	John W. Pates, Jr. (703) 308–8195, pates.john@epa.gov

B. Docket Content

1. *Review docket.* The registration review docket contains information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

The docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration review of this pesticide. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on this case, including the active ingredient(s) for the case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.
- As provided in 40 CFR 155.58, the registration review docket for the pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case has been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 15, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–17404 Filed 7–21–09; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 15, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501—3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 21, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0233.

Title: Part 36—Separations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,997 respondents; 7,562 responses.

Estimated Time per Response: 5–22 hours.

Frequency of Response: On occasion, annual and quarterly reporting requirements, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i) and (j), 221(c) and 410(c).

Total Annual Burden: 71,283 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting and third party requirements) of this information collection. There is a change in the estimated respondents/responses and the annual burden hours. The Commission is reporting a 1,774 adjusted increase in the number of responses and a 12,865 hour increase in the total annual burden.

In order to determine which carriers are entitled to universal service support, all (both rural and non-rural) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by 47 CFR 63.611 of the Commission's rules for each of its study areas and, if applicable, for each wire center (that term is defined in 47 CFR part 54).

Loops are the telephone lines running from the carriers' switching facilities to the customer. The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated quarterly pursuant to 47 CFR 63.612. Pursuant to section 36.613, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission on October 1 of each year. An incumbent LEC is defined as a carrier that meets the definition of ''incumbent local exchange carrier'' in 47 CFR 51.5 of the Commission's rules.

Section 63.612(a) also requires non-rural carriers to file loop counts (no loop cost data) on a quarterly basis. The Commission requires that non-rural carriers submit quarterly loop counts in order to ensure that universal service fund (USF) support for non-rural carriers is accurately calculated when competitive eligible telecommunications (ETCs) are present in the incumbent LECs' operating areas. Quarterly loop cost and loop count data filing are voluntary for rural carriers. When a competitive ETC, however, is operating in an incumbent rural carrier's territory, the incumbent rural carrier is required to submit quarterly loop count data. Quarterly filings of loop counts are necessary because if an incumbent rural carrier does not update its loop count data more often than annually, but its competitor does, the competitor's more recent data may include loops captured from the incumbent since the incumbent's last filing. Thus, the incumbent would continue to receive support based on an overstated number of loops. Section 54.307 allows competitive ETCs to receive USF support at the same per line support amount that the incumbent LEC receives in the same operating territory. In order to receive such support, the competitive ETC must file loop count data with the USAC on a quarterly basis.

The reporting requirements are necessary to implement the congressional mandate for universal service. The requirements are necessary to verify that rural and non-rural LECs are eligible to receive universal service support. Information filed with NECA pursuant to section 36.611 is used to calculate universal service support payments to eligible carriers. Without this information, NECA and USAC (Universal Service Administration Company) would not be able to calculate such payments to eligible carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–17406 Filed 7–21–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 14, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments September 21, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0943.

Title: Section 54.809, Carrier Certification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 604 respondents; 604 responses.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: Annual reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 254 of the Telecommunications Act of 1996.

Total Annual Burden: 906 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission or to the Universal Service Administrative Company (USAC). If the Commission requests respondents to submit information to the Commission or to USAC that the respondents believe is confidential, the respondents may request confidential treatment of such information pursuant to 47 CFR section 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting and/or third party disclosure requirements) of this information collection. There is a slight adjustment in the Commission's burden estimates. The Commission is reporting an increase in the number of respondents/responses since the 2006 submission to the OMB. Therefore, the total annual burden hours have increased by 48 hours.

Section 254(e) of the Telecommunications Act of 1996 provides that a carrier receiving universal service support must use that support ''only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.'' Accordingly, Section 54.809 requires each price cap carrier or competitive ETC that wishes to receive interstate access universal service support to file an annual certification with Universal Service Administrative Company (USAC) and the Commission. The certification must state that the carrier will use its interstate access universal service support only for the provision, maintenance and upgrading of facilities and service for which the support is intended.

The Commission and USAC use the certifications to ensure that carriers comply with section 254(e) of the Telecommunications Act by using the interstate access universal service support on for which the support is intended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–17405 Filed 7–21–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–1529]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') gives notice of Mr. Steven Newton's suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Newton, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by August 21, 2009. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or August 21, 2009, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8. Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 09–1529, which was mailed to Mr. Newton and released on July 14, 2009. The complete text of the notice of suspension is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

The attached is the Suspension and Initiation of Debarment Letter to Mr. Steven Newton.

Federal Communications Commission.

Hillary DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

July 14, 2009
DA 09–1529
VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND FACSIMILE (415–522–1506)
AND EMAIL (*gsl@defendergroup.com*)
Mr. Steven Newton, c/o Law Office of Garrick S. Lew, Attn: Garrick Sherman Lew, 600 Townsend Street, Suite 329E, San Francisco, California 94102
Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–1928

Dear Mr. Newton: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of Wire Fraud, Aiding and Abetting, and Collusion, in violation of 18 U.S.C. 2 and 1343, and 15 U.S.C. 1, in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently,

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent two count conviction on wire fraud, collusion, and aiding and abetting. *See United*

Continued

pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pleaded guilty and were sentenced to six months in prison in connection with your participation in two schemes to defraud the E-Rate program.[4] Specifically, you admitted that as former Vice President at Premio Computers, Inc.[5] and principal manager of SEMA4, Inc.[6] and Digital Connect Communications, Inc.[7] you participated in schemes to defraud the E-Rate program of money and property through materially false and fraudulent pretenses for your own enrichment.[8] You did this, with the help of other co-conspirators or defendants, by controlling the bidding, application, and implementation and invoicing process of the E-Rate program.[9] You submitted materially false information to USAC regarding the cost and eligibility of equipment services and intentionally misrepresented the school district's ability and willingness to pay their portion of the E-Rate projects.[10]

Pursuant to section 54.8 of the Commission's rules, your conviction on criminal offenses arising out of activities associated with or related to the schools and libraries support mechanism requires the Bureau to suspend you from continuing to participate in any activities associated with or related to the schools and libraries support mechanism.[11] Activities arising out of or related to the schools and libraries support mechanism include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[12]

Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**, pending the Bureau's final debarment determination.[13] In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation.[14] Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[15] Such requests, however, will not ordinarily be granted.[16] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[17] The Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[18]

II. Initiation of Debarment Proceedings

Your guilty plea and conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for suspension and debarment defined in section 54.8(c) of the Commission's rules.[19] Therefore, pursuant to section 54.8 of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.[20]

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[21] Absent extraordinary circumstances, the Bureau will debar you.[22] The Bureau will

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States v. *Steven Newton,* Criminal Docket No. 3:05–CR–00208–CRB–10, *Plea Agreement* (N.D. Cal. filed and entered Apr. 20, 2007) (''*Newton Plea''*). *See also United States* v. *Steven Newton,* Criminal Docket No. 3:05–CR–00208–CRB–10, Judgment (N.D. Cal. filed and entered Mar. 31, 2009) (Convicted on Counts 11 and 22) (''*Newton Judgment''*). *See also generally United States* v. *Video Network Communications, Inc. et al.,* Criminal Docket No. 3:05–CR–00208–CRB, Superseding Indictment (N.D. Cal. filed Dec. 8, 2005 and entered Dec. 12, 2005), *http://www.usdoj.gov/atr/cases/f213600/213626.htm* (accessed May 1, 2008) (''*VNCI Superseding Indictment''*).

[2] 47 CFR 54.8 (2008). *See also* 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order''*) (adopting section 54.521 of the Commission's rules to suspend and debar parties from the E-Rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *Second Report and Order,* 18 FCC Rcd at 9225, para. 66; *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[4] *Newton Judgment* at 1–2. *See also VNCI Superseding Indictment* at paras. 4–6, 8–11, 15, 19, 22–24, 72–78, 133–137, 145–151.

[5] Premio Computers, Inc. manufactures computers, software and peripheral equipment, and sells them to wholesale, commercial, and government entities. *See In the Matter of Premio, Inc.,* Notice of Debarment, 22 FCC Rcd 1019, 1021 (Jan. 22, 2007). Premio Computers, Inc. was debarred from the E-Rate program for its involvement in E-Rate related fraud. *See generally id.*

[6] SEMA4 is a California company that provided equipment and services for a project funded by the E-Rate program. *See VNCI Superseding Indictment* at paras. 74–75. The charges against SEMA4 were dismissed. *See United States* v. *SEMA4, Inc.,* Criminal Docket No. 3:05–CR–00208–CRB–3 (N.D. Cal. terminated June 12, 2007).

[7] Digital Connect Communications, Inc. was a California company that provided telecommunication and Internet access equipment and services to schools participating in the E-Rate program. *See VNCI Superseding Indictment* at paras. 134–135. The charges against this company were dismissed. *See United States* v. *Digital Connect Communications, Inc.,* Criminal Docket No. 3:05–CR–00208–CRB–4 (N.D. Cal. terminated June 12, 2007).

[8] *See VNCI Superseding Indictment* at paras. 4–6, 8–11, 15–16, 19, 22–24, 72–78, 133–137, 145–151.

[9] *Id.*

[10] These misrepresentations included inflating the costs of eligible telecommunications equipment and services in applications to cover the cost of ineligible equipment and services. *See VNCI Superseding Indictment* at paras. 8–11, 22–24, 78, 145–151.

[11] 47 CFR 54.8(b)–(e); *see also* 54.8(a)(4).

[12] 47 CFR 54.8(a)(1); *see also* 54.8(a)(3).

[13] 47 CFR 54.8(a)(7), (e)(1); *see also Second Report and Order,* 18 FCC Rcd at 9226, para. 69.

[14] 47 CFR 54.8(e)(4).

[15] *Id.*

[16] *Id.*

[17] 47 CFR 54.8(f); *see also Second Report and Order,* 18 FCC Rcd at 9226, para. 70.

[18] 47 CFR 54.8(e)(5), (f); *see also Second Report and Order,* 18 FCC Rcd at 9226, para. 70.

[19] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). You were convicted on various fraud charges. *See supra* note 4.

[20] *See* 47 CFR 54.8(b), (c).

[21] 47 CFR 54.8(e)(3), (5); *see also Second Report and Order,* 18 FCC Rcd at 9226, para. 70.

[22] 47 CFR 54.8(e)(5); *see also Second Report and Order,* 18 FCC Rcd at 9227, para. 74.

decide any request for reversal or limitation of debarment within 90 days of receipt of such request.[23] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[24]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[25] The Bureau may, if necessary to protect the public interest, extend the debarment period.[26]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah L. Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah L. Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C327, Washington, DC, 20554, with a copy to Michele Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Michele.Berlove@fcc.gov.*

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov.*

Sincerely yours,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

Michael Wood, Antitrust Division, United States Department of Justice (via e-mail)

[FR Doc. E9–17407 Filed 7–21–09; 8:45 am]

BILLING CODE 6712–01–P

[23] 47 CFR 54.8(e)(5), (f); *see also Second Report and* Order, 18 FCC Rcd at 9226, para. 70.

[24] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[25] 47 CFR 54.8(a)(1), (d), (g); *see also Second Report and Order,* 18 FCC Rcd at 9225, para. 67.

[26] 47 CFR 54.8(g).

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–1528]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') gives notice of Mr. Andre J. Hornsby's suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Hornsby, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by August 21, 2009. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or August 21, 2009, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8. Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 09–1528, which was mailed to Mr. Hornsby and released on July 14, 2009. The complete text of the notice of suspension is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

The attached is the Suspension and Initiation of Debarment Letter to Mr. Andre J. Hornsby.

Federal Communications Commission.

Dated: July 14, 2009.

Hillary DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND E–MAIL (*robertbonsib@marcusbonsib.com*) AND FACSIMILE (301) 441–3003.

Andre J. Hornsby, c/o Robert C. Bonsib, Marcus and Bonsib, 6411 Ivy Lane, Suite 116, Greenbelt, MD 20770.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–09–IH–0408.

Dear Mr. Hornsby: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of federal crimes, including honest services wire fraud,

witness and evidence tampering, and obstruction of justice, in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently, pursuant to 47 CFR section 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] On November 25, 2008, the United States District Court for the District of Maryland sentenced you to six years in prison, to be followed by three years of supervised release, following your conviction on federal crimes, including honest services wire fraud, witness and evidence tampering, and obstruction of justice, in connection with your activities related to the E-Rate program.[4] In addition, you were ordered to pay a $20,000 fine and $70,000 in restitution to the Prince George's County Public School System (''PGCPS'').[5]

You were employed as Chief Executive Officer, Secretary and Treasurer for the Board of Education for Prince Georges County (''Board'').[6] As Chief Executive Officer of the Board, you were responsible for overall administration of PGCPS from June 2003 until June 2005.[7] Beginning in November 2003, you devised schemes to defraud PGCPS for your personal financial gain.[8] You directed PGCPS employees to seek proposals from outside E-Rate consulting companies for assistance with PGCPS' E-Rate applications.[9] Despite late filings and other disqualifications, you ultimately steered the bidding process and directed contracts be awarded for E-Rate consulting services to Erate Managers, LLC (''Erate Managers''), a non-existent company purportedly operated by an individual who had worked for you in other school districts (''Former Employee'').[10] You, in turn, were to receive more than $100,000 from the Former Employee for your role in securing the E-Rate consulting contracts with PGCPS, and accepted $1,000 in cash as a down payment.[11] Further, you made materially false representations, destroyed records and otherwise hid your associations with the Former Employee to conceal your role in the fraudulent conduct at issue.[12]

Pursuant to section 54.8 of the Commission's rules, your conviction on criminal offenses arising out of consulting activities associated with or related to the schools and libraries support mechanism requires the Bureau to suspend you from continuing to participate in any activities associated with or related to the schools and libraries support mechanism.[13] Activities arising out of or related to the schools and libraries support mechanism include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[14]

Your suspension becomes immediately effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**, pending the Bureau's final debarment determination.[15] In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation.[16] Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[17] Such requests, however, will not ordinarily be granted.[18] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[19] The Bureau will decide any request for the reversal or modification of suspension within 90 days of its receipt of such request.[20]

II. Initiation of Debarment Proceedings

Your conviction for criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for suspension and debarment defined in section 54.8(c) of the Commission's rules.[21] Therefore, pursuant to section

[1] *See* 18 U.S.C. 1343, 1346 (honest services wire fraud), 1512(b) (attempted evidence tampering), and 1503 (obstruction of justice). Any further reference in this letter to ''your conviction'' refers to your six count conviction. *United States* v. *Andre Jose Hornsby,* Criminal Docket No. 8:06CR00376–PJM–1, Judgment (D. Md. filed and entered Dec. 5, 2008) (''*Hornsby Judgment''*). *See also United States* v. *Andre Jose Hornsby,* Criminal Docket No. 8:06CR00376–PJM–1, Superseding Indictment (D. Md. filed and entered Apr. 23, 2008) (''*Hornsby Indictment''*).

[2] 47 CFR 54.8 (2008). *See also* 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order''*) (adopting section 54.521 of the Commission's rules to suspend and debar parties from the E-Rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *Second Report and Order*, 18 FCC Rcd at 9225, para. 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[4] *Hornsby Judgment* at 1–5. *See also Hornsby Indictment* at 1–21, 24–27, 29–30. (Discussion of your convictions in this notice is limited to those activities related to the E-Rate program).

[5] *Hornsby Judgment* at 6–7. PGCPS was one of the 20 largest school districts in the nation in 2004, with a budget of more than $1 billion. *See* Department of Justice Press Release (Nov. 25, 2008), *available at http://baltimore.fbi.gov/dojpressrel/pressrel08/ba112508.htm* (*DOJ November 2008 Press Release*).

[6] *Hornsby Indictment* at 2. *See also DOJ November 2008 Press Release* at 1. The Board was responsible for oversight of PGCPS. *See* Hornsby Indictment at 1. Responsibility for the overall administration of PGCPS was entrusted to the Chief Executive Officer, who reported to the Board. *See Hornsby Indictment* at 2.

[7] *Hornsby Indictment* at 2.

[8] *Id.* at 14–19. *See also DOJ November 2008 Press Release* at 1.

[9] *Hornsby Indictment* at 6, 15.

[10] *Id.* at 4–8. You directed PGCPS personnel not to award contracts to the company with the highest overall score, and stalled the bidding process past the deadline in favor of waiting for a proposal from Erate Managers. *Hornsby Indictment* at 6–7. *See also DOJ November 2008 Press Release* at 1–2.

[11] *Hornsby Indictment* at 8, 14–15. *See also DOJ November 2008 Press Release* at 1–2.

[12] *Hornsby Indictment* at 14–18, 24–27, 29–30. *See also DOJ November 2008 Press Release* at 3.

[13] 47 CFR 54.8(b)–(e); *see also* 54.8(a)(4).

[14] 47 CFR 54.8(a)(1); *see also* 54.8(a)(3).

[15] 47 CFR 54.8(a)(7), (e)(1); *see also Second Report and Order*, 18 FCC Rcd at 9226, para. 69.

[16] 47 CFR 54.8(e)(4).

[17] *Id.*

[18] *Id.*

[19] 47 CFR 54.8(f); *see also Second Report and Order*, 18 FCC Rcd at 9226, para. 70.

[20] 47 CFR 54.8(e)(5), (f); *see also Second Report and Order*, 18 Fcc Rcd at 9226, para. 70.

[21] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice

54.8 of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.[22]

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[23] Absent extraordinary circumstances, the Bureau will debar you.[24] The Bureau will decide any request for reversal or limitation of debarment within 90 days of receipt of such request.[25] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[26]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[27] The Bureau may, if necessary to protect the public interest, extend the debarment period.[28]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Michele.Berlove@fcc.gov*.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Michael R. Pauzé, Assistant United States Attorney, Department of Justice (via e-mail) Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. E9–17410 Filed 7–21–09; 8:45 am]

BILLING CODE 6712–01–P

and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.8(c). You were convicted for obstruction of justice, attempted evidence tampering for falsification or destruction of records, and wire fraud. *See supra* note 4.

[22] *See* 47 CFR 54.8(b), (c).

[23] 47 CFR 54.8(e)(3), (5); *see also Second Report and Order*, 18 FCC Rcd at 9226, para. 70.

[24] 47 CFR 54.8(e)(5); *see also Second Report and Order*, 18 FCC Rcd at 9227, para. 74.

[25] 47 CFR 54.8(e)(5), (f); *see also Second Report and Order*, 18 FCC Rcd at 9226, para. 70.

[26] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[27] 47 CFR 54.8(a)(1), (d), (g); *see also Second Report and Order*, 18 FCC Rcd at 9225, para. 67.

[28] 47 CFR 54.8(g).

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 August 6, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Dante B. Benedetti, Petaluma, California, and James M. Ryan, Santa Rosa, California; to become trustees of the Frank P. Doyle Trust, Article IX, and thereby retain voting shares of Exchange Bank, both of Santa Rosa, California.

2. Rommel R. Medina and Ruell R. Medina, both of San Bruno, California; to acquire additional voting shares of MNB Holdings Corporation, and thereby indirectly acquire additional voting shares of Mission National Bank, both of San Francisco, California.

Board of Governors of the Federal Reserve System, July 17, 2009.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E9–17388 Filed 7–21–09; 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 August 24, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Castle Creek Capital Partners III LP; Castle Creek Capital III LLC, Eggemeyer Capital LLC; Ruh Capital LLC; and Legions IV Advisory Corp., all of Rancho Santa Fe, California; to acquire additional voting shares, for a total of up to 55 percent of First Chicago Bancorp, and thereby indirectly acquire additional voting shares of First Chicago Bank and Trust Company, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System, July 16, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–17389 Filed 7–21–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Manufacturing Equipment & Tools Export, Inc. dba Metex, 4709 NW. 72 Ave., Miami, FL 33166, Officers: Nelson J. Fernandez, Manager (Qualifying Individual), Enrique Schmid, Director/President.

Ocean Cargo Logistics Group, LLC, 14381 SW. 163 Street, Miami, FL 33177, Officer: Juan C. Gonzalez, Member/Manager (Qualifying Individual).

Gruden USA, Inc., 51 Newark Street, Ste. 302, Hoboken, NJ 07030, Officer: Carmella De Primo, Vice President (Qualifying Individual).

American Trailer Express, Inc., Bldg. #5 West Side, 2000 NW. 97th Ave., Doral, FL 33172–23163, Officer: Roberto Faith, President (Qualifying Individual).

O.T.S. Logistics, Inc., 18726 South Western Ave., Ste. 212, Gardena, CA 90248, Officers: Nol E. Burger, President (Qualifying Individual), Inez M. Imura, Secretary.

Tomcar Investment USA, 8369 North Coral Circle, N. Lauderdale, FL 33068, Officer: Orlando Cabrera, President (Qualifying Individual).

Alfa International Logistics, Inc., 139 Mitchell Ave., Ste. 201, So. San Francisco, CA 94080, Officers: Shu-Jen A. Lee, Vice President (Qualifying Individual), Sophie Chen, CEO.

Transitex International LTD Company, BP 348, Abidjan 27, Abidjan Ivory Coast, Côte d'Ivoire, Officer: Kan R. Nguessan, Owner (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Consolidators International, Inc. dba Corrigans Express Freight, 8900 Bellanca Ave., Los Angeles, CA 90045, Officer: Ronen Donde, Vice President (Qualifying Individual).

Fluent Logistics LLC, 105 Golfview Lane, Summerville, SC 29485, Officers: Hugh R. Parrish, President (Qualifying Individual), John Drabble, Vice President Int'l.

FS Goodship, LLC, 699 Lively Blvd., Elk Grove Village, IL 60007, Officer: Robert Villiard, President (Qualifying Individual).

Overseas Cargo, Inc., 9614 Pondwood Rd., Boca Raton, FL 33428, Officer: Suramya T. Atapattu, President. (Qualifying Individual).

Dimar International Cargo Corp., 8075 NW. 68th Street, Miami, FL 33166, Officers: Rafael A. Marmolejos, President (Qualifying Individual), Norma Marmolejos, Vice President.

Mainfreight, Inc., 1400 Glenn Curtiss Street, Carson, CA 90746, Officer: Christopher A. Coppersmith, President (Qualifying Individual).

Woojin Global Logistics USA, Inc., 2396 E. Pacifica Pl., Ste. 220, Rancho Dominguez, CA 90220, Officer: Eric S. Lee, CFO (Qualifying Individual).

Konig International Logistics, LLC, 1731 NW. 82nd Ave., Doral, FL 33126, Officers: Jamilett Moran, Vice President (Qualifying Individual), Marco A. Guerra, Jr., President.

SM Logistics, Inc., 14241 E. Firestone Blvd., #400, La Mirada, CA 90638, Officers: Ronald Iswono, Vice President-Operations (Qualifying Individual), Asdin Ng, President.

Synergetic Specialty Logistics Inc., dba Custom Crating and Logistics Inc., dba Mabuhay! A Balikbayan Box Service, 375 Country Club Drive, Bensenville, IL 60106, Officers: Eric G. Zerrudo, President (Qualifying Individual), James T. Harper, Treasurer.

All Transport, Inc., 8369 NW. 66th Street, Miami, FL 33166, Officer: Marie Lynet Lopez, President (Qualifying Individual).

P.O. Box International/U.S.A., Inc., dba P.O. Box International, 2801 NW. 74th Ave., Ste. 112, Miami, FL 33332, Officer: Oscar F. Gonzalez, President (Qualifying Individual).

Intersea Transport, Inc., 300 Beeline Drive, #102, Bensenville, IL 60106, Officer: Jo Soon Chung, President (Qualifying Individual).

CNS Logistics, Inc., 18408 S. Laurel Park Rd., Ste. A, Rancho Dominguez, CA 90220, Officers: Kwang Soo Kim, Secretary (Qualifying Individual), Soo Yeon Yoon, C.E.O.

AAA Intercontinental Cargo Inc., 16114 Windom Dr., Webster, TX 77598, Officer: Meheddin O. Meirkhan, President (Qualifying Individual).

United Logistics Corp., 3650 Mansell Rd., #400, Alpharetta, GA 30022, Officer: Jason S. Ewing, Secretary (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

ICAT Logistics, Inc., 6805 Douglas Legum Dr., Elkridge, MO 21075, Officer: Christian N. Cser, Ocean Freight Dir. (Qualifying Individual).

Express Shipping Logistics, Inc., 1135 Londonberry Lane, Glen Ellyn, IL 60137, Officers: Khizar Jafri, Secretary (Qualifying Individual), Abedaslam H. Ayesh, President.

River City Global Logistics LLC, dba Transgroup International, 3370 Turfway Rd., Ste. 180, Erlanger, KY 41018, Officers: Tiffany M. Scudder, Secretary (Qualifying Individual), Sean Brandenburg, Member/Manager.

Dated: July 17, 2009.

Tanga S. FitzGibbon,

Assistant Secretary.

[FR Doc. E9–17415 Filed 7–21–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
020890N	Aegis International, Inc., 300 Sunset Road, Suite 301, Burlington TWP, NJ 08016	May 6, 2009.
000858F	John A. Steer Co., 28 South 2nd Street, Philadelphia, PA 19106	April 29, 2009.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–17418 Filed 7–21–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 019355F.
Name: ABAD Air, Inc.
Address: 10411 NW 28th Street, Miami, FL 33172.
Date Revoked: June 21, 2009.
Reason: Failed to maintain a valid bond.

License Number: 014597NF.
Name: Airgate International Corporation.
Address: 153–04 Rockaway Blvd., Jamaica, NY 11434.
Date Revoked: June 19, 2009.
Reason: Failed to maintain valid bonds.

License Number: 014945F.
Name: All Freight Services International, Inc.
Address: 701 Waterford Way, Ste. 160, Miami, FL 33126.
Date Revoked: June 12, 2009.
Reason: Surrendered license voluntarily.

License Number: 019674N.
Name: A.M.X. Logistics, Inc.
Address: 145–32 157th Street, Jamaica, NY 11434.
Date Revoked: June 15, 2009.
Reason: Surrendered license voluntarily.

License Number: 019254N.
Name: APL Logistics Hong Kong, Limited.
Address: 1111 Broadway, Oakland, CA 94607–5500.
Date Revoked: June 23, 2009.
Reason: Surrendered license voluntarily.

License Number: 002937F.
Name: Baillie Lumber Co., Inc.
Address: 4002 Legion Drive, Hamburg, NY 14075.
Date Revoked: June 18, 2009.
Reason: Failed to maintain a valid bond.

License Number: 002923NF.
Name: Caribtran, Inc. dba ABC International Freight dba Sola Ocean Transport.
Address: 12600 NW. 107th Ave., Miami, FL 33178.
Date Revoked: June 15, 2009.
Reason: Failed to maintain valid bonds.

License Number: 013300N.
Name: Commercial Maritime Services, Inc.
Address: 1501 N. Norwood Dr., Ste. 122, Hurst, TX 76054.
Date Revoked: June 25, 2009.
Reason: Surrendered license voluntarily.

License Number: 016395N.
Name: Fondocean Express (HK) Limited.
Address: 59 Tai Yip Street, I/F Sunshine Cargo Centre, Kowloon Bay, Hong Kong, China.
Date Revoked: June 25, 2009.
Reason: Surrendered license voluntarily.

License Number: 020429NF.
Name: Marserve, Inc.
Address: 15421 Vantage Parkway West, #116, Houston, TX 77032.
Date Revoked: May 4, 2009.
Reason: Surrendered license voluntarily.

License Number: 020633N.
Name: M&P Multi-Services Corp dba M&P Multi-Services.
Address: 6153 Johnson Street, Hollywood, FL 33024
Date Revoked: June 20, 2009.
Reason: Failed to maintain a valid bond.

License Number: 009796N.
Name: OB Express Company dba BLN Express Company.
Address: 13048 Bach Way, Cerritos, CA 90703.
Date Revoked: June 21, 2009.
Reason: Failed to maintain a valid bond.

License Number: 003490N.
Name: Rose International, Inc. dba Rose Maritime Container Line.
Address: 410 Ogden Ave., PHD, Jersey City, NJ 07307.
Date Revoked: June 13, 2009.
Reason: Failed to maintain a valid bond.

License Number: 018721N.
Name: Starbridge U.S.A. Corporation dba Worldwide Shipping Agency.
Address: 1800 N. Andrews Ave., Ft. Lauderdale, FL 33311.
Date Revoked: June 17, 2009.
Reason: Failed to maintain a valid bond.

License Number: 002251F.
Name: Thomas Tello & Co., Inc.
Address: 5900 S. Eastern Ave., Ste. 125, City of Commerce, CA 90040.
Date Revoked: June 10, 2009.
Reason: Surrendered license voluntarily.

License Number: 004091F.
Name: Metra Corporation.
Address: 1637 Holloway Rd., Holland, OH 43528
Date Revoked: June 21, 2009.
Reason: Failed to maintain a valid bond.

License Number: 019565N.
Name: The Padded Wagon, Inc.
Address: 163 Exterior St., Bronx, NY 10451.
Date Revoked: June 19, 2009.
Reason: Failed to maintain a valid bond.

License Number: 019465N.
Name: Ultimate Logistics Enterprise, Inc.
Address: 9041 Pittsburgh Ave., Rancho Cucamonga, CA 91730.
Date Revoked: June 18, 2009.
Reason: Failed to maintain valid bond.

License Number: 016852N.
Name: Worldlink Logix Service, Inc.

Address: 33 Wood Ave., Ste. 600, Iselin, NJ 08830.

Date Revoked: June 14, 2009.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–17417 Filed 7–21–09; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0014]

Federal Supply Service; Submission for OMB Review; Standard Form (SF) 123, Transfer Order-Surplus Personal Property and Continuation Sheet

AGENCY: Federal Acquisition Service, (GSA).

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Standard Form (SF) 123, transfer order-surplus personal property and continuation sheet. A request for public comments was published in the **Federal Register** at 74 FR 18715, April 24, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 21, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Kemp, Property Disposal Specialist, Federal Acquisition Service, at telephone (703) 605–2879 or via e-mail to *William.kemp@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0014, Standard Form (SF) 123, Transfer Order-Surplus Personal Property and Continuation Sheet, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard form (SF) 123, Transfer Order-Surplus Personal Property and Continuation Sheet is used by public agencies, nonprofit educational or public health activities, programs for the elderly, service educational activities, and public airports to apply for donation of Federal surplus personal property. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

B. Annual Reporting Burden

Respondents: 45,413.
Responses per Respondent: 1.
Hours per Response: 0.01783.
Total Burden Hours: 810.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0014, Standard Form (SF) 123, Transfer Order-Surplus Personal Property and Continuation Sheet, in all correspondence.

Dated: July 16, 2009.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9–17495 Filed 7–21–09; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0652]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Notice of Participation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 6, 2009 (74 FR 15496), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0191. The approval expires on May 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 14, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–17329 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0521]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 2009 (74 FR 10253), the agency announced that the proposed information collection had been submitted to OMB for review and

clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0581. The approval expires on June 30, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: July 15, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–17330 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0606]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Export of Food and Drug Administration Regulated Products: Export Certificates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Export of Food and Drug Administration Regulated Products: Export Certificates'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 2009 (74 FR 9247), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0498. The approval expires on October 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 15, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–17331 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0454]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Contact Substances Notification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Contact Substances Notification System'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: : Jonna Capezzuto, Office of Information Management (HFA–710),Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 4, 2008 (73 FR 73936), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0495. The approval expires on May 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: July 15, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–17332 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0131]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Marketing Act of 1987

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by August 21, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0435. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prescription Drug Marketing Act of 1987; 21 CFR Part 203—(OMB Control Number 0910–0435)—Extension

FDA is requesting OMB approval under the PRA (44 U.S.C. 3501–3520) for the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Public Law 100–293). PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as U.S. goods returned, causing a health and safety risk to U.S. consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against U.S. manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

REPORTING REQUIREMENTS	
21 CFR 203.11	Applications for reimportation to provide emergency medical care
21 CFR 203.30(a)(1) and (b)	Drug sample requests (drug samples distributed by mail or common carrier)
21 CFR 203.30(a)(3), (a)(4), and (c)	Drug sample receipts (receipts for drug samples distributed by mail or common carrier)
21 CFR 203.31(a)(1) and (b)	Drug sample requests (drug samples distributed by means other than the mail or a common carrier)
21 CFR 203.31(a)(3), (a)(4), and (c)	Drug sample receipts (drug samples distributed by means other than the mail or a common carrier)
21 CFR 203.37(a)	Investigation of falsification of drug sample records
21 CFR 203.37(b)	Investigation of a significant loss or known theft of drug samples
21 CFR 203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples
21 CFR 203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples
21 CFR 203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples
RECORDKEEPING REQUIREMENTS	
21 CFR 203.23(a) and (b)	Credit memo for returned drugs
21 CFR 203.23(c)	Documentation of proper storage, handling, and shipping conditions for returned drugs
21 CFR 203.30(a)(2) and 21 CFR 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized by the appropriate State authority to prescribe the product
21 CFR 203.31(d)(1) and (d)(2)	Contents of the inventory record and reconciliation report required for drug samples distributed by representatives
21 CFR 203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report
21 CFR 203.31(e)	Lists of manufacturers' and distributors' representatives
21 CFR 203.34	Written policies and procedures describing administrative systems
21 CFR 203.37(a)	Report of investigation of falsification of drug sample records
21 CFR 203.37(b)	Report of investigation of significant loss or known theft of drug samples
21 CFR 203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed; (The information collection in 21 CFR 203.38(b) is already approved under OMB control number 0910–0139)
21 CFR 203.39(d)	Records of drug samples destroyed or returned by a charitable institution
21 CFR 203.39(e)	Record of drug samples donated to a charitable institution
21 CFR 203.39(f)	Records of donation and distribution or other disposition of donated drug samples
21 CFR 203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions
21 CFR 203.50(a)	Drug origin statement
21 CFR 203.50(b)	Retention of drug origin statement for 3 years
21 CFR 203.50(d)	List of authorized distributors of record

The reporting and recordkeeping requirements are intended to help achieve the following goals:

(1) To ban the reimportation of prescription drugs produced in the United States except when reimported by the manufacturer or under FDA authorization for emergency medical care;

(2) To ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample;

(3) To limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner;

(4) To require licensed or authorized practitioners to request prescription drug samples in writing;

(5) To mandate storage, handling, and recordkeeping requirements for prescription drug samples;

(6) To prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization; and

(7) To require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

In the **Federal Register** of March 24, 2009 (74 FR 12365) (March 24, 2009, document), FDA published a 60-day notice requesting public comment on the information collection provisions. We received one comment.

Comment Summary: The comment pertained to the recordkeeping requirements in § 203.50(a) and (b) (21 CFR 203.50(a) and (b)).

The comment concluded that FDA's estimate of ''0'' recordkeeping hours for these regulations in table 2 of the March 24, 2009, document was in error. In summary, the comment contended: (1) Pedigrees must be passed by non-authorized distributors of record prior to each wholesale distribution; (2) all wholesale distributors that provide or receive pedigrees after December 1, 2006, must retain copies of the pedigrees for 3 years; and (3) those records must include names and addresses of all parties to the transaction and the date of the transactions.

The comment offered no estimates for the recordkeeping provisions in § 203.50(a) and (b). The comment explained that it is unable to suggest estimates for the burden hours because most of its members ''have likely received a designation of ''ADR'' status by most drug manufacturers for most of the prescription drug products that they purchase, and they provide pedigrees only on a limited basis.'' Thus, the comment said, there are a large number of distributors that are not members of its organization but are subject to the pedigree requirements and, therefore, the burden hours that its members alone accrue would not be reflective of the entire population of distributors that are affected, and would likely be a minority of the total burden hours that all distributors experience.

The comment recommended that FDA ''conduct a PRA review and estimate of the paperwork burden for healthcare distributors to comply with these regulations.''

FDA Response: FDA appreciates the comment and, as requested, we plan to conduct research to obtain estimates for the burden hours that may be currently incurred by distributors to comply with the recordkeeping provisions in § 203.50. In this regard, we are requesting that interested persons submit, to the docket identified in the heading of this document, data on the burden hours currently incurred by distributors to comply with the recordkeeping provisions in § 203.50. In addition, in response to the comment, we are revising table 2 of the March 24, 2009, document to add recordkeeping estimates for § 203.50. We used these estimates in previous **Federal Register** notices based on information we received at that time, and no comments were received on these burden hours. If our research results in new data that differs from these estimates, we will amend the approval for OMB control number 0910–0435 to include revised estimates for these provisions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
203.11	1	1	1	.5	30 minutes
203.30(a)(1) and (b)	61,961	12	743,532	.06	44,612
203.30(a)(3), (a)(4), and (c)	61,961	12	743,532	.06	44,612
203.31(a)(1) and (b)	232,355	135	31,367,925	.04	1,254,717
203.31(a)(3), (a)(4), and (c)	232,355	135	31,367,925	.03	941,038
203.37(a)	50	4	200	.25	50
203.37(b)	50	40	2,000	.25	500
203.37(c)	1	1	1	1	1
203.37(d)	50	1	50	.08	4
203.39(g)	1	1	1	1	1
Total					2,285,535.30

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
203.23(a) and (b)	31,676	5	158,380	.25	39,595
203.23(c)	31,676	5	158,380	.08	12,670
203.30(a)(2) and 203.31(a)(2)	2,208	100	220,800	.50	110,400
203.31(d)(1) and (d)(2)	2,208	1	2,208	40	88,320
203.31(d)(4)	442	1	442	24	10,608
203.31(e)	2,208	1	2,208	1	2,208
203.34	90	1	90	40	3,600
203.37(a)	50	4	200	6	1,200
203.37(b)	50	40	2,000	6	12,000
203.39(d)	65	1	65	1	65
203.39(e)	3,221	1	3,221	.50	1,610
203.39(f)	3,221	1	3,221	8	25,768
203.39(g)	3,221	1	3,221	8	25,768
203.50(a)	125	100	12,500	.17	2,125
203.50(b)	125	100	12,500	.50	6,250
203.50(d)	691	1	691	2.0	1,382
Total					332,769

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 15, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–17394 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Study of Factors Influencing Consumer Choices Among Health Plans and Clinicians.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection. This proposed information collection was previously published in the **Federal Register** on September 3rd, 2008 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. This notice differs from the 60 day notice in the following ways: (1) The number of responses has been decreased from 6,000 to 4,950, (2) the burden hours are decreased from 838 to 709, and (3) the descriptions of each experimental arm in the sections: Clinician Choice Experimental Design and Health Plan Choice Experimental Design were removed.

DATES: Comments on this notice must be received by August 21, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''Study of Factors Influencing Consumer Choices Among Health Plans and Clinicians''

AHRQ proposes to use an experimental design to determine factors that influence consumers' understanding and use of performance information to select among health plans and clinicians. The experimental design will include two parallel experiments, one designed to assess factors influencing choice of health plans and one designed to assess factors influencing choice of individual doctors. For both the health plan and clinician choice experiments respondents will be randomly assigned to one of six experimental arms that vary according to the type and complexity of performance information

and the size of the choice set (number of plans or doctors) included in the Web-based report. Respondents will complete the experiment through a secure online connection from their homes. Data will be derived from pre and post-test questionnaires and from server logs that record the web pages visited and viewing times.

The results of this study will be used to develop recommendations for helping consumers to better understand and more effectively use complex information to select health plans and providers, with the aim of making performance information less burdensome and more accessible, useful, and transparent to the public. This study, funded through cooperative agreements with the RAND Corporation and Harvard University, is being conducted pursuant to AHRQ's statutory mandate to promote health care quality improvement by conducting and supporting research that develops and presents scientific evidence regarding all aspects of health care, 42 U.S.C. 299(b)(l), and to conduct research on health care and on systems for the delivery of such health care, 42 U.S.C. 299a.

Method of Collection

Participants in this study will be recruited through the Knowledge Networks national online panel of consumers. The experimental designs of the clinician choice experiment and of the health plan choice experiment are discussed separately below.

Clinician Choice Experimental Design

Participants will see a web page labeled ''Performance Overview'' that presents performance information for a set of primary care doctors in a way that allows them to compare doctor ratings. Performance is summarized by assigning one to five stars to show how each doctor compares with others in the same geographic area. Participants can click on hyperlinks or a tab to see more detailed results. The six experimental arms differ in the type and amount of performance information presented and the number of doctors listed.

The goals of the experiment are to assess the process of consumer choice and the extent to which the Consumer Assessment of Healthcare Providers and Systems (CAHPS)-type measures are consulted, and to examine how consumers respond to different types of information about doctor quality, including quantitative patient experience measures, anecdotal reports from individual patients, and clinical performance indicators. The post-test questionnaire will elicit participants' understanding and impressions of the material they saw on the Web site and inquire about how they made their choice. Therefore, the post-test questions will differ across experimental arms.

Health Plan Choice Experimental Design

The basic design of the health plan choice experiment is similar to that used for the clinician choice experiment. The key difference in the choice set is that as is true in real-world choices health plan choice is made complex in the experiment by introducing a larger number of measures of performance, compared to those available to inform clinician choice. Even the simplest experimental arm has twice as many component measures for health plans as for clinicians. Reports from consumers include both anecdotes and a count of aggregate complaints that have been filed against the plan.

Potentially offsetting the cognitive burdens caused by additional measures, health plan choices typically involve fewer options than do clinician choices; in this choice experiment participants will face choice sets involving either 4 or 8 health plans.

A second substantial difference exists between the health plan and clinician choice experiments: the former assesses in an explicit manner the ways in which emotionality affects how consumers make use of information. It will do so in two ways. First, the counts of complaints mentioned above as an additional measure of plan performance represent a quantitative score with a stronger emotional valence than the other measures. Second, two of the experimental arms will ''prime'' respondents to think about health outcomes in a more emotionally laden manner, to see if this alters the way in which they process this information.

The goals of the experiment are to assess the process of consumer choice and the extent to which CAHPS-type measures are consulted, and to examine how consumers respond to different types of information about health plan quality, including customer services and accessibility of care issues, selected Healthcare Effectiveness Data and Information Set (HEDIS) measures for preventive care and treatment of chronic conditions, and selected reports on enrollee complaint rates and other issues. The post-test questionnaire will elicit participants' understanding and impressions of the material they saw on the Web site and inquire about how they made their choice. Therefore, the post-test questions will differ across experimental arms.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this one year experiment. All participants will complete the pre-test, which is estimated to require 5 minutes. As explained above, the experimental website varies by experimental arm; however, based on preliminary testing, each participant will require an average of 10 minutes to review the information on the site. The post-test questionnaires will require between 7 to 14 minutes to complete, depending on the experimental arm. The total burden hours are estimated to be 709 hours.

Exhibit 2 shows the respondents' cost burden associated with their time to participate in this experiment. The total cost burden is estimated to be $13,887.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Experimental group	Number of responses	Number of responses per respondent	Hours per response	Total burden hours
Clinician Choice Experiment: Pretest	750	1	5/60	63
Experimental Web site	750	1	10/60	125
Baseline/Control Arm Post-test	125	1	7/60	15
Experimental Arm #1 Post-test	125	1	8/60	17
Experimental Arm #2 Post-test	125	1	8/60	17
Experimental Arm #3 Post-test	125	1	12/60	25
Experimental Arm #4 Post-test	125	1	12/60	25
Experimental Arm #5 Post-test	125	1	14/60	29
Health Plan Choice Experiment: Pretest	900	1	5/60	75
Experimental Web site	900	1	10/60	150

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Experimental group	Number of responses	Number of responses per respondent	Hours per response	Total burden hours
Baseline/Control Arm Post-test	150	1	7/60	18
Experimental Arm #1 Post-test	150	1	8/60	20
Experimental Arm #2 Post-test	150	1	12/60	30
Experimental Arm #3 Post-test	150	1	12/60	30
Experimental Arm #4 Post-test	150	1	14/60	35
Experimental Arm #5 Post-test	150	1	14/60	35
Total	4,950	na	na	709

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Experimental group	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Clinician Choice Experiment: Pretest	750	63	$19.56	$1,232
Experimental Web site	750	125	19.56	2,445
Baseline/Control Arm Post-test	125	15	19.56	293
Experimental Arm #1 Post-test	125	17	19.56	333
Experimental Arm #2 Post-test	125	17	19.56	333
Experimental Arm #3 Post-test	125	25	19.56	489
Experimental Arm #4 Post-test	125	25	19.56	489
Experimental Arm #5 Post-test	125	29	19.56	567
Health Plan Choice Experiment: Pretest	900	75	19.56	1,467
Experimental Web site	900	150	19.56	2,934
Baseline/Control Arm Post-test	150	18	19.56	352
Experimental Arm #1 Post-test	150	20	19.56	391
Experimental Arm #2 Post-test	150	30	19.56	587
Experimental Arm #3 Post-test	150	30	19.56	587
Experimental Arm #4 Post-test	150	35	19.56	685
Experimental Arm #5 Post-test	150	35	19.56	685
Total	4,950	709	na	13,887

*Based upon the mean of the average wages, ''National Compensation Survey: Occupational Wages in the United States, May 2007,'' U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost for developing and conducting both the health plan and clinician choice components of this study, including the cost of designing the experiments, developing the simulated Web-based reports, conducting usability testing of the Web reports, pilot testing the experiment, collecting the data, analyzing the data, preparing reports and papers for journal submission, and the cost for AHRQ staff to oversee the project. The total and annual costs are identical since data collection will not exceed one year. The total cost is estimated to be $844,000.

EXHIBIT 3—TOTAL AND ANNUALIZED COSTS

Cost components	Total cost	Annual cost
Experimental design	$168,900	$168,900
Development of simulated Web-based reports	157,900	157,900
Pilot testing	56,000	56,000
Usability testing of Web-based reports	56,300	56,300
Data collection via Knowledge Networks	126,000	126,000
Data analysis	56,300	56,300
Preparation of reports and journal papers	112,600	112,600
AHRQ project management	110,000	110,000
Total	844,000	844,000

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of

automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 8, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–17203 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Health Literacy Item Set Supplemental to CAHPS Hospital Survey—Pretest of Proposed Questions and Methodology.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on May 13th, 2009 and allowed 60 days for public comment. The purpose of this notice is to allow an additional 30 days for public comment. This notice differs from the 60 day notice in the following ways: (1) The burden hours are increased from 200 to 250, and (2) an incentive experiment has been added.

DATES: Comments on this notice must be received by August 21, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''Health Literacy Item Set Supplemental to CAHPS Hospital Survey—Pretest of Proposed Questions and Methodology''

AHRQ proposes to conduct a pretest of the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospital Survey health literacy module. The CAHPS program is a multi-year initiative of the Agency for Healthcare Research and Quality. AHRQ first launched the program in October 1995 in response to concerns about the lack of good information about the quality of health plans from the enrollees' perspective. Numerous public and private organizations collected information on enrollee and patient satisfaction, but the surveys varied from sponsor to sponsor and often changed from year to year. The CAHPS® program was designed to make it possible to compare survey results across sponsors and over time, and to generate tools and resources that sponsors can use to produce understandable and usable comparative information for consumers.

Over time, the program has expanded beyond its original focus on health plans to address a range of health care services to meet the various needs of health care consumers, purchasers, health plans, providers, and policymakers. Based on a literature review and an assessment of currently available questionnaires, AHRQ identified the need to develop a health literacy module for the CAHPS® Hospital Survey. The intent of the planned module is to examine patients' perspectives on how well health information is communicated to them by healthcare professionals in the hospital setting. The objective of the new module is to provide information to health plans, hospitals, clinicians, group practices, and other interested parties regarding the quality of health information delivered to patients. The set of questions about health literacy will be evaluated as a supplement to the CAHPS® Hospital Survey.

This study will be conducted for AHRQ by its contractor, RAND Corporation. It is being conducted pursuant to AHRQ's statutory authority to conduct research and evaluations on health care and systems for the delivery of such care, including activities with respect to (1) the quality, effectiveness, efficiency, appropriateness and value of health care services. See 42 U.S.C. 299a(a)(1).

This study is a one-time field test to be completed in the calendar years 2009 and 2010. The field test to be conducted under this request will be done for the following purposes:

a. Analysis of item wording—Assess candidate wordings for items.

b. Analysis of participation rate—Evaluate the overall response rate and the proportion of that obtained from mail versus telephone modes of data collection.

c. Case mix adjustment analysis—Evaluate variables that need to be considered for case mix adjustment of scores.

d. Psychometric analysis—Provide information for the revision of the health literacy item set based on the assessment of the reliability and validity.

e. Incentive experiment—Provide information on the effectiveness of a post-paid, $5 incentive as a mechanism to enhance response by randomizing half the sample at one site to an experiment in which a post-paid incentive of $5 is provided for completing the survey.

The end result will be collection of the data related to the assessment of patients' perspective on how well health information is communicated to them by health care professionals in a hospital setting. The field testing will ensure that future data collections yield high quality data and minimize respondent burden, increase agency efficiency, and improve responsiveness to the public. The survey items will be added to currently available CAHPS® surveys and will enhance the ability of hospitals to assess the quality of their services.

Method of Collection

The potential respondent universe is persons who had at least one overnight stay at a hospital within the previous five months. Excluded from the study will be those who were less than 18 years old at the time of their admission, had a psychiatric diagnosis, were discharged to a hospice facility or died during the hospitalization. Testing sites will be selected purposively based on several considerations, including ability to execute the activities necessary to participate in the pilot, number of beds, number of discharges for medical, surgical, and obstetric patients, average length of stay, location (urban versus rural), profit status, and academic medical center status.

The draw will be a sample large enough to yield approximately 600 completes. It is assumed that

approximately 1,200 patients will be sampled across all field sites with a response rate of 50%. This pretest will use a mixed mail-telephone mode of data collection which will include the following steps:

- Mailing an advanced notification letter.
- Mailing of the questionnaire and cover letter.
- Postcard reminder.
- A second mailing of the questionnaire to non-respondents.
- Up to 10 telephone calls to every mail non-respondent approximately two weeks after the final mailing.

Every effort will be made to maximize the response rate, while retaining the voluntary nature of the effort. An advance notice will be mailed prior to mailing the survey and will include a letter explaining what the survey is about, who is doing it and why, and providing contact information for questions. The second mailing and telephone follow-up are expected to result in significant increases in response. Every effort to maximize the response rate among Spanish-speaking respondents will be made. A Spanish version of the advance notice, the questionnaire, cover letters, and the reminder card, as well as a Spanish version of the telephone transcript has been developed. The cover letters in English include a note in Spanish instructing respondents to call a toll free number if they would like to receive a copy of the survey in Spanish. In addition, participating field sites will ask for information on language preference and/or race/ethnicity of sample patients so that the mailing of the survey can be tailored for Spanish-speakers.

Finally, phone follow-up to respondents who do not complete the survey by mail will be conducted by bilingual interviewers so that those who want to complete the survey by telephone in either English or Spanish can accommodated.

Surveys generally do not yield complete responses from every individual sampled from the population. In this analysis, patterns of both unit and item nonresponse will be examined and modeled, and the potential impact of nonresponse bias assessed. A common set of administrative variables (*e.g.*, age, gender, race/ethnicity) will be used to predict unit nonresponse. These variables and others collected on the survey itself will be used as predictors of item nonresponse. Case mix adjustment and nonresponse weights will be used to more accurately reflect consumer experiences with health care in the field test hospitals. Multivariate logistic regression models will be used to analyze the factors associated with unit nonresponse and item nonresponse.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in this data collection. The CAHPS Hospital Survey Health Literacy Module will be completed by about 600 persons. The estimated response time of 25 minutes is based on the written length of the survey and AHRQ's experience with previous CAHPS® surveys of comparable length that were fielded with similar samples. The total burden hours are estimated to be 250 hours.

Exhibit 2 shows the respondents' cost burden associated with their time to participate in this data collection. The total cost burden of completing pretest is estimated to be $4,890.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Mail survey with reminder card, mail and phone follow-up	600	1	25/60	250
Total	600	1	na	250

EXHIBIT 2—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Mail survey with reminder card, mail and phone follow-up	600	250	$19.56	$4,890
Total	600	250	na	4,890

*Based upon the average wages, ''National Compensation Survey: Occupational Wages in the United States, May 2007,'' U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The total cost for the contracted service is approximately $245,000 and the cost for AHRQ staff to oversee the project is $50,000, including benefits. The project was initiated in October of 2008 and it is forecasted that it will be completed in 18 months. The initial developmental work has been completed within the first ten months of the project and it is forecasted that the pretest, analysis and finalization of the Health Literacy Item Set supplemental to CAHPS Hospital Survey can be completed within the next eight months. It is estimated that the total cost of the project is approximately $295,000. The annualized cost of the project is approximately $196,669.

EXHIBIT 3—ESTIMATED COST

Cost component	Total cost	Annualized cost
Review of literature	$20,000	$13,334
Cognitive interviews	60,000	40,000
Field test	90,000	60,000

EXHIBIT 3—ESTIMATED COST—Continued

Cost component	Total cost	Annualized cost
Data analyses	40,000	26,667
Finalize survey	35,000	23,334
AHRQ project management	50,000	33,334
Total	295,000	196,669

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AFIRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 8, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–17201 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB review; Comment Request

Title: National Survey of Child and Adolescent Well-Being Second Cohort (NSCAW II).

OMB No.: 0970–0202.

Description: The Department of Health and Human Services (HHS) intends to collect follow-up data on a sample of children and families for the National Survey of Child and Adolescent Well-Being (NSCAW). The NSCAW was authorized under section 427 of the Personal Responsibility and Work Opportunities Reconciliation Act of 1996. The NSCAW is the only source of nationally representative, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. Information is collected about children's cognitive, social, emotional, behavioral, and adaptive functioning, as well as family and community factors that are likely to influence their functioning. Family service needs and service utilization also are addressed in the data collection.

Selection of the current NSCAW sample and baseline data collection began in 2007 with a final anticipated sample size of 5,700 children. The proposed data collection will allow for follow-up of this sample 18 months post-baseline, and will follow the same format as that used in the baseline round and will employ, with only modest revisions, the same instruments that were used in the previous round. Data from NSCAW are made available to the research community through licensing arrangements from the National Data Archive on Child Abuse and Neglect at Cornell University.

Respondents: Children and their associated permanent or foster caregivers, caseworkers, and teachers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Interview	1,424	1	1.33	1,894
Caregiver Interview	1,424	1	1.9	2,706
Caseworker Interview	285	3	1	855
Teacher Questionnaire	855	1	.50	428

Estimated Total Annual Burden Hours: 5,882.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *OPREinfocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: July 16, 2009.

Seth F. Chamberlain,

OPRE Reports Clearance Officer.

[FR Doc. E9–17301 Filed 7–21–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Mandatory Guidelines for Federal Workplace Drug Testing Programs (OMB NO. 0930–0158)—Extension

SAMHSA's Mandatory Guidelines for Federal Workplace Drug Testing Programs will request OMB approval for the Federal Drug Testing Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (69 FR 19644) dated April 13, 2004, and for the information provided by laboratories for the National Laboratory Certification Program (NLCP).

The Federal Drug Testing Custody and Control Form is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. The Federal Drug Testing Custody and Control Form approved by OMB three years ago is being resubmitted for OMB approval without any revision.

Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures. Collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the laboratory's testing procedures before arriving at the laboratory.

The NLCP application form has not been revised compared to the previous form.

The annual total burden estimates for the Federal Drug Testing Custody and Control Form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Burden/ response (hrs.)	Number of responses	Total annual burden (hrs.)
Custody and Control Form			
Donor	.08	7,096,000	567,680
Collector	.07	7,096,000	496,720
Laboratory	.05	7,096,000	354,800
Medical Review Officer	.05	7,096,000	354,800
Laboratory Application	3.00	3	9
Laboratory Inspection Checklist	3.00	100	300
Laboratory Recordkeeping	250.00	50	12,500
Total			1,786,809

Written comments and recommendations concerning the proposed information collection should be sent by August 21, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: July 15, 2009.

Dennis O. Romero,

Deputy Executive Officer and Deputy Director, Office of Program Services.

[FR Doc. E9–17377 Filed 7–21–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

High Diversity/High Affinity Domain Antibody Library

Description of Invention: Available for licensing and commercial development is a highly diverse domain antibody (dAb) library providing antibodies that bind with high affinity to a variety of antigen targets. Antibody diversity is inherently limited by using only three CDRs of either light chain variable domain (LCDRs) or heavy chain variable domain (HCDRs). This novel dAb library is designed using light chain variable domain 3 (LCDR3) and heavy chain variable domain (HCDR3), which are of primary importance for creating binding site diversity in the human immune system. The library contains 2.5×10^{10} dAbs. Human naturally occurring LCDR3s were grafted onto HCDR1 of m0. These antibodies are of very small size (15–17 kDa), high

stability and can be expressed at high levels as monomers. The library can be used for the selection of antibodies to any antigen including cancer and viral antigens and exhibit such properties as good penetration, stability, solubility, high levels of expression (at potentially low cost), and low level of immunogenicity or toxicity.

Applications: Cancer; Infectious disease; Therapeutics; Diagnostics; Research reagents; Research tools; Library panning.

Inventors: Dimiter S. Dimitrov and Weizao Chen (NCI).

Relevant Publications:

1. P Jirholt et al. Exploiting sequence space: shuffling in vivo formed complementarity determining regions into a master framework. Gene 1998 Jul 30;215(2):471–476.

2. Y Reiter et al. An antibody single-domain phage display library of a native heavy chain variable region: isolation of functional single-domain VH molecules with a unique interface. J Mol Biol. 1999 Jul 16;290(3):685–698.

3. L Riechmann and S Muyldermans. Single domain antibodies: comparison of camel VH and camelised human VH domains. J Immunol Methods 1999 Dec 10;231(1–2):25–38.

4. E Söderlind et al. Recombining germline-derived CDR sequences for creating diverse single-framework antibody libraries. Nat Biotechnol. 2000 Aug;18(8): 852–856.

5. LJ Holt et al. Domain antibodies: proteins for therapy. Trends Biotechnol. 2003 Nov;21(11): 484–490.

6. W Chen et al. Construction of a large phage-displayed human antibody domain library with a scaffold based on a newly identified highly soluble, stable heavy chain variable domain. J Mol Biol. 2008 Oct 10;382(3):779–789.

Patent Status: HHS Reference No. E–216–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, CCR, CCRNP is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this domain antibody library. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Mouse Monoclonal Antibody Targeting Tetanus Toxin Heavy Chain Fragment C

Description of Invention: The FDA is pleased to announce as available for licensing a murine monoclonal antibody that specifically binds to Fragment C of tetanus toxin. Tetanus toxin is one of the most potent neurotoxins known. It is a complex molecule, composed of a linked heavy chain and light chain, each having different domains serving different functions. One domain of the heavy chain, known as ''Fragment C,'' is known to bind the toxin to neurons. Fragment C is the focus of much research, including: analysis of the subtle differences between neuronal uptake of tetanus toxin and the related botulinum toxin, the design of compounds that block the uptake of tetanus toxin, and design of drugs that target the same cellular mechanism to enhance uptake.

Applications: Cell-based imaging agents; New drug development, including antitoxins.

Advantages: Toxin specific-site antibodies.

Development Status: Cell line (mouse-spleen hybridoma) established to produce antibodies.

Inventors: Marjorie A. Shapiro, PhD, and Sean P. Fitzsimmons, PhD (FDA).

Relevant Publication: SP Fitzsimmons, KJ Clark, R Wilkerson, MA Shapiro. Inhibition of tetanus toxin fragment C binding to ganglioside G(T1b) by monoclonal antibodies recognizing different fragment C epitopes. Vaccine 2000 Aug 15;19(1):114–121.

Patent Status: HHS Reference No. E–061–2009/0—Research Materials. Patent protection is not being pursued for this technology.

Licensing Status: Available for non-exclusive Biological Materials Licensing.

Licensing Contact: Bruce Goldstein, J.D., M.S.; 301–435–5470; *goldsteb@mail.nih.gov.*

Collaborative Research Opportunity: The FDA's Office of Biotechnology Products in the Center for Drug Evaluation and Research is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize antibodies directed against tetanus toxin. Please contact Alice Welch, PhD at (301) 827–0359 or *Alice.Welch@fda.hhs.gov* for more information.

Membrane Proximal Region of HIV gp41 Anchored to the Lipid Layer of a Virus-Like Particle Vaccine

Description of Invention: The HIV–1 envelope glycoproteins (gp120–gp41), which mediate receptor binding and entry, are the major targets for neutralizing antibodies. Although the envelope glycoproteins are immunogenic and induce a variety of antibodies, the neutralizing antibodies that are induced are strain-specific and the majority of the immune response is diverted to non-neutralizing determinants. Broadly neutralizing antibodies have been isolated only from natural HIV infection, and rarely, as only five broadly-neutralizing antibodies have been identified to date. Three are gp41-directed (2F5, 4E10 and Z13) and the other two (b12 and 2G12) are gp120-directed. The three gp41 neutralizing antibodies recognize the membrane proximal region (MPR) of the HIV–1 gp41 glycoprotein. The MPR region includes a series of amino acids that lie on the HIV virus surface, just before gp41 crosses the viral membrane. The MPR is highly hydrophobic (fifty percent of its residues are hydrophobic) and is highly conserved across many HIV clades. Recently, the hydrophobic context of MPR and the presence of lipid membrane were shown to be important for the optimal binding of 2F5 and 4E10 antibodies. To date, immunization with conserved membrane proximal elements or the core 2F5 epitope in a number of contexts has failed to elicit broadly neutralizing antibodies.

Available for licensing is a technology that uses the immunogenic hepatitis B surface antigen (HBsAg) platform to array epitopes from the conserved, neutralization-sensitive MPR of HIV–1, and use of these constructs to induce an immune response to HIV–1. The replacement of a membrane spanning domain of HBsAg with a membrane spanning domain of gp41 anchors gp41 into HBsAg in virtually the identical orientation as on HIV virions and correctly orients the nearby MPR on the lipid layer. More specifically, HBsAg variant compositions with one or more transmembrane domains of the HBsAg replaced with a gp41 transmembrane domain and one or more gp41 MPRs are available for licensing.

Application: Development of Human Immunodeficiency Virus (HIV) vaccines, therapeutics and diagnostics.

Development Status: Vaccine candidates have been synthesized and preclinical studies have been performed.

Inventors: Ira Berkower (FDA).

Patent Status: U.S. Provisional Application No. 61/086,098 filed 04 Aug 2008 (HHS Reference No. E–291–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

A Unique Infectious Hepatitis C Virus Clone, Strain HC–TN (genotype 1a)

Description of Invention: It is anticipated that this infectious clone of hepatitis C virus (HCV) strain HC–TN (genotype 1a) will be useful for the development of vaccines and antiviral drugs that target HCV, genotype 1a. The HC–TN strain is unique because it has been shown to cause fulminant hepatitis. To date, only one other HCV strain, JFH1 (genotype 1b), has been isolated that is known to cause fulminant hepatitis. Additionally, little is known about the etiology of fulminant hepatitis C disease. Therefore, the HC–TN strain may be useful as a tool for studying the etiology of fulminant hepatitis. This invention includes the infectious clone, nucleotide sequences of the clone, and polypeptides encoded by the HC–TN clone. Methods are included for producing attenuated HCV, and for screening therapeutics against HCV and developing vaccines and diagnostics.

Apparently, no companies or other laboratories have this HC–TN strain. The availability of the pHC–TN clone will be highly useful to pharmaceutical companies since no further research is required for its commercialization into, e.g., assays for testing antiviral compounds targeting HCV.

Applications:

- Production of attenuated viruses and polypeptides.
- HCV vaccines, diagnostics, therapeutics and screening tool for anti-HCV compounds.

Advantages: There is no universally effective therapy against HCV infection. This invention enables development of vaccines, diagnostics and therapeutics that are specific for the HC–TN strain or HCV genotype 1a.

Development Status: The technology is currently in the preclinical stage of development.

Market: More than 80% of the HCV infections in North and South America, Europe, Russia, China, Japan and Australia are genotype 1. The instant technology may be transferred through biological materials licenses for territories in which no patent rights exist.

Inventors: Jens Bukh, Robert H. Purcell, Suzanne U. Emerson, Akito Sakai, Patrizia Farci (NIAID).

Publication: A Sakai et al. In vivo study of the HC–TN strain of hepatitis C virus recovered from a patient with fulminant hepatitis: RNA transcripts of a molecular clone (pHC–TN) are infectious in chimpanzees but not in Huh7.5 cells. J Virol. 2007 July;81(13):7208–7219.

Patent Status: U.S. Patent Application No. 12/061,504 filed 02 April 2008 (HHS Reference No. E–249–2007/0–US–01); No foreign rights available.

Licensing Status: Available for licensing.

Licensing Contact: RC Tang, JD, LLM; 301–435–5031; *tangrc@mail.nih.gov*.

Dated: July 13, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Transfer, National Institutes of Health.

[FR Doc. E9–17319 Filed 7–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of 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 Environmental Health Sciences Special Emphasis Panel. Formative Children's Center Review 2.

Date: July 24, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P. O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–1307. *malone@niehs.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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 14, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17303 Filed 7–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 11 a.m.–12 p.m., July 23, 2009.

Place: The teleconference call will originate at the CDC.

Status: Open to the public. Teleconference access limited only by availability of telephone ports. To participate in the teleconference please dial 1 (800) 779–6036 and enter conference code 6417394.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), regarding: (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: The agenda will include a follow up discussion of CDC's *Interim Guidance for Infection Control for Care of Patients with Confirmed or Suspected Novel Influenza A (H1N1) Virus Infection in a Healthcare Setting.*

Agenda items are subject to change as priorities dictate. This notice is being published less than 15 days prior to the meeting due to the public health emergency declared on April 26, 2009. There is a critical need for this committee to deliberate and discuss urgent matters related to the H1N1 virus, and be actively engaged in the national preparedness and response efforts as dictated by circumstances and events.

Contact Person For More Information: Wendy Vance, HICPAC, Division of Healthcare Quality Promotion, NCPDCID, CDC, 1600 Clifton Road, NE., Mailstop D–10, Atlanta, Georgia 30333 Telephone (404) 639–2891 or *HICPAC@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 17, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office,Centers for Disease Control and Prevention (CDC).

[FR Doc. E9–17514 Filed 7–21–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0302]

Withdrawal of Approval of New Animal Drug Applications; Ketamine; S–Methoprene; Nitazoxanide

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADAs) and an abbreviated new animal drug application (ANADA) listed in table 1 of this document. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove portions reflecting approval of these NADAs and ANADA.

DATES: Withdrawal of approval is effective August 3, 2009.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, e-mail: *john.bartkowiak@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the two NADAs and ANADA listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1.

Sponsor	NADA/ANADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Wellmark International, 1501 East Woodfield Rd., suite 200, West Schaumburg, IL 60173	NADA 141–162 Zodiac Fleatrol Flea Caps (S-methoprene)	520.1390 (011536)
IDEXX Pharmaceuticals, Inc., 7009 Albert Pick Rd., Greensboro, NC 27409	NADA 141–178 NAVIGATOR Paste (nitazoxanide)	520.1498 (065274)
Abbott Laboratories, North Chicago, IL 60064	ANADA 200–279 KETAFLO Injection (ketamine HCl, USP)	522.1222a (000074)

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 141–162 and 141–178, and ANADA 200–279, and all supplements and amendments thereto, are hereby withdrawn, effective August 3, 2009.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: July 14, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–17408 Filed 7–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0095; No Form.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the process for the appeal of decisions of flood insurance claims issued through the National Flood Insurance Program (NFIP). The appeal process establishes a formal mechanism to allow policyholders to appeal the decisions of any insurance agent, adjuster, insurance company, or any FEMA employee or contractor, in cases or unsatisfactory decisions on claims, proof of loss, and loss estimates.

DATES: Comments must be submitted on or before September 21, 2009.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without

change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Donald Waters, Insurance Examiner, FEMA Mitigation, Risk Insurance Division, Claims and Appeals, 202–212–4725 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 205 of The Bunning-Bereuter-Blumenauer Flood Insurance Reform Act (FIRA) of 2004, Public Law 108–264, [insert title number] U.S.C. 4102A, requires the Federal Emergency Management Agency (FEMA) to establish by regulation an additional process for the appeal of decisions of flood insurance claims issued through the National Flood Insurance Program (NFIP). Consequently, FEMA issued an interim final rule codifying into regulation what was previously an existing informal process to handle appeals regarding decisions related to coverage or claims under the NFIP.

Collection of Information

Title: National Flood Insurance Program Claims Appeal Process.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0095.

Form Titles and Numbers: No Form.

Abstract: The Bunning-Blumenauer Flood Insurance Act of 2004 requires that FEMA establish an appeals process to allow respondents to request a review of an unsatisfactory decision on flood claims.

Affected Public: Individuals or households; Business or other for profit.

Estimated Total Annual Burden Hours: 1,800 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate *	Total annual respondent cost
Individuals and Households.	Appeals Letters/No Forms.	900	1	2	1,800	$28.45	$51,210
Total	.....	900	.....	.....	1,800	.....	51,210

Estimated Cost: There are no operation or maintenance costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Tammi Hines,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–17316 Filed 7–21–09; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–56]

Application for Fee or Roster Personnel (Appraisers and Inspectors) Designation and Appraisal Report Forms

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 FHA Appraiser Roster is a national listing of eligible appraisers who prepare appraisals on single-Family properties that will be security for FHA insured mortgages. The FHA Inspector Roster is a national listing of eligible inspectors who determine the quality of construction of single-family properties that will be security for FHA insured mortgages. FHA Roster Appraisers and Inspectors assist in protecting the interest of HUD, the taxpayers, and the FHA insurance fund. Appraisal report forms are industry standards for single-family property types.

DATES: *Comments Due Date:* August 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0538) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

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: Application for Fee or Roster Personnel (Appraisers and Inspectors) Designation and Appraisal Report Forms.

OMB Approval Number: 2502–0538.

Form Numbers: HUD–92563–A, and HUD–926531, HUD–92564–CN, Fannie Mae Forms: 1004, 1004–c, 1025, 1073, 1075, 2055.

Description of the Need for the Information and Its Proposed Use: The FHA Appraiser Roster is a national listing of eligible appraisers who prepare appraisals on single-Family properties that will be security for FHA insured mortgages. The FHA Inspector Roster is a national listing of eligible inspectors who determine the quality of construction of single-family properties that will be security for FHA insured mortgages. FHA Roster Appraisers and Inspectors assist in protecting the interest of HUD, the taxpayers, and the FHA insurance fund. Appraisal report forms are industry standards for single-family property types.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	17,650	26.52		0.0537		25,184

Total Estimated Burden Hours: 25,184.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 17, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–17482 Filed 7–21–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–N–5281–N–57]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request, Healthy Home and Lead Hazard Control Grant Programs Data Collection—Progress Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 21, 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 and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; Telephone (202) 402–8048, (this is not a toll-free number) or e-mail Ms Deitzer at *Lillian.L.Deitzer@hud.gov*; for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Warren Friedman, Senior Advisor, Office of Healthy Homes and Lead Hazard Control, L, Department of Housing and Urban Development, 451 Seventh Street, SW. Room 8236, Washington, DC 20410; e-mail: *Warren.Friedman@hud.gov;* telephone (202) 402–7574; Fax 202–708–0014. (This is not a toll-free number) for other available information. If you are a hearing-or-speech-impaired person, you may reach the above telephone numbers through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

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: Healthy Home and Lead Hazard Control Grant Programs Data Collection-Progress Reporting.

OMB Control Number if applicable: 2539–0008.

Description of the need for the information and proposed use: This data collection is Designed to Provide HUD timely information on progress of Healthy Homes Demonstration Program, Healthy Homes Technical Studies Program, Lead Base paint Hazard Control Program, Lead Hazard Reduction Demonstration Program, Lead Outreach Program, Lead Technical Studies Program and Operation Lead Elimination Action Program grant activities. HUD will Provide Congress with status report as required by statue.

Agency form numbers, if applicable: HUD–96006.

Members of Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of responses, frequency of responses, and hours of responses: An estimation of the total numbers of hours needed to prepare the Information collection is 8,160, number of respondents is 255, frequency of response is ''quarterly,'' and the hours per Response is 32 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 17, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–17471 Filed 7–21–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5282–N–01]

Notice of Proposed Information Collection for Public Comment: Annual Performance Report and Annual Homeless Assessment Report

AGENCY: Office of the Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone (202) 402–8048 (this is not a toll-free number) or email Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, CPD, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410; telephone (202) 402–4497 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and 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: Annual Performance Report and Annual Homeless Assessment Report.

Description of the need for the information and proposed use: This information will enable HUD to assess the performance of individual projects and to determine project compliance with funding requirements. This information assists HUD in understanding homeless clients and service needs at the local level. HUD also uses this information to provide information on overall program performance and outcomes to HUD staff, other federal agencies, the Congress, and the Office of Management and Budget.

Agency form number: HUD–40118.

Members of affected public: Grant recipients for the Supportive Housing Program (SHP), Shelter Plus Care (S+C) Program, and the Section 8 Moderate Rehabilitation for the Single Room Occupancy Dwellings (SRO) Program.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: APR (6,500 responses × 1,650 minutes = 182,000 hours per annum) + AHAR with Automated Software Report (425 responses × 48 minutes = 20,400 hours per annum) + AHAR with Manual Software Report (63 responses × 88 minutes = 5,544 hours per annum) = 207,944 hours per annum.

Status of the proposed information collection: Revision of currently approved package 2506–0145.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 13, 2009.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E9–17328 Filed 7–21–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–55]

Pre-Foreclosure Sales Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The respondents are lenders, counselors, and homeowners who are attempting to sell properties prior to foreclosure. The information collection is a record of the process from the borrower's application to participate in the program and the lender's approval, to the Department's review and approval of the specifics of the sale. Homeowner's participation in the program must also receive housing counseling and the confirmation that the counseling has been performed must be documented.

DATES: *Comments Due Date:* August 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0464) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

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: Pre-Foreclosure Sales Program.

OMB Approval Number: 2502–0464.

Form Numbers: HUD–90035, HUD–90041, HUD–90045, HUD–90051, HUD–90052.

Description of the Need for the Information and Its Proposed Use: The respondents are lenders, counselors, and homeowners who are attempting to sell properties prior to foreclosure. The information collection is a record of the process from the borrower's application to participate in the program and the lender's approval, to the Department's review and approval of the specifics of the sale. Homeowner's participation in the program must also receive housing counseling and the confirmation that the counseling has been performed must be documented.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	30,010	1.36	....	0.180	....	7,404

Total Estimated Burden Hours: 7,404.

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: July 17, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–17484 Filed 7–21–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–54]

Budget-Based Rent Increase

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.

Owners of certain cooperative and subsidized rental projects are required to submit a Budget Worksheet when requesting rent increases. HUD Field Offices review and evaluate the amount and reasonableness of the requested increase.

DATES: *Comments Due Date:* August 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0324) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

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: Budget-Based Rent Increase.

OMB Approval Number: 2502–0324.

Form Numbers: HUD–92547–A.

Description of the Need for the Information and Its Proposed Use: Owners of certain cooperative and subsidized rental projects are required to submit a Budget Worksheet when requesting rent increases. HUD Field Offices review and evaluate the amount and reasonableness of the requested increase.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12,218	1	....	5	....	61,090

Total Estimated Burden Hours: 61,090.

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: July 16, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–17490 Filed 7–21–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5276–N–02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2009, is 3⅜ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2009, is 4⅛ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 2009, is 4⅛ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 4⅛ percent for the 6-month period beginning July 1, 2009. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the latter 6 months of 2009.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1. 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅜	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1996	Jan. 1, 1997
6¾	Jan. 1, 1997	July 1, 1997
7⅛	July 1, 1997	Jan. 1, 1998
6⅜	Jan. 1, 1998	July 1, 1998
6⅛	July 1, 1998	Jan. 1, 1999
5½	Jan. 1, 1999	July 1, 1999
6⅛	July 1, 1999	Jan. 1, 2000
6½	Jan. 1, 2000	July 1, 2000
6½	July 1, 2000	Jan. 1, 2001
6	Jan. 1, 2001	July 1, 2001
5⅞	July 1, 2001	Jan. 1, 2002
5¼	Jan. 1, 2002	July 1, 2002
5¾	July 1, 2002	Jan. 1, 2003
5	Jan. 1, 2003	July 1, 2003
4½	July 1, 2003	Jan. 1, 2004
5⅛	Jan. 1, 2004	July 1, 2004
5½	July 1, 2004	Jan. 1, 2005
4⅞	Jan. 1, 2005	July 1, 2005
4½	July 1, 2005	Jan. 1, 2006
4⅞	Jan. 1, 2006	July 1, 2006
5⅜	July 1, 2006	Jan. 1, 2007
4¾	Jan. 1, 2007	July 1, 2007
5	July 1, 2007	Jan. 1, 2008
4½	Jan. 1, 2008	July 1, 2008
4⅝	July 1, 2008	Jan. 1, 2009
4⅛	Jan. 1, 2009	July 1, 2009
4⅛	July 1, 2009	Jan. 1, 2010

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning July 1, 2009, is 3⅜ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: July 10, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–17325 Filed 7–21–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–MB–2009–N149] [30120–1113–0000–D3]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; Bald Eagle Post-delisting Monitoring

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must send comments on or before August 21, 2009.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see **ADDRESSES**) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: None. This is a new collection.

Title: Bald Eagle Post-delisting Monitoring.

Type of Request: New.

Affected Public: States, tribes, and local governments, Federal land managers, and nongovernmental partners.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once every 5 years.

Note: For each 5–year survey, we estimate a total of 48 respondents will provide 48 responses totaling 1,478 burden hours. The burden estimates below are annualized over the 3–year period of OMB approval.

Estimated Annual Number of Respondents: 16.

Estimated Total Annual Responses: 16.

Estimated Time per Response: 30.8 hours.

Estimated Total Annual Burden Hours: 493.

Abstract: This information collection implements the requirements of the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA). The bald eagle in the lower 48 States was removed from the List of Endangered and Threatened Wildlife on August 8, 2007 (July 9, 2007, 72 FR 37346). Section 4(g) of the ESA requires that all species that are recovered and removed from the List of Endangered and Threatened Wildlife (delisted) be monitored in cooperation with the States for a period of not less than 5 years. The purpose of this requirement is to detect any failure of a recovered species to sustain itself without the protections of the ESA.

The bald eagle has a large geographic distribution that includes a substantial amount of non-Federal land. Although the ESA requires that monitoring of recovered species be conducted for not less than 5 years, the life history of bald eagles is such that it is appropriate to monitor this species for a longer period of time in order to meaningfully evaluate whether or not the recovered species continues to maintain its recovered status.

We plan to monitor the status of the bald eagle by collecting data on occupied nests over a 20–year period with sampling events held once every 5 years. The Post-delisting Monitoring Plan for the Bald Eagle (Plan) describes monitoring procedures and methods.

When OMB takes action on this ICR, we will publish a notice in the Federal Register announcing the availability of the final Plan. If you would like a copy of the Plan before the notice of availability is published, contact Hope Grey (see **ADDRESSES**) or you can obtain a copy online at http://www.reginfo.gov.

Comments: On July 9, 2007, we published a notice of availability for the draft Plan in the Federal Register (72 FR 37373). We solicited comments for a period of 90 days, ending on October 9, 2007. In addition, in the fall of 2007, we gave two web presentations for State biologists. These presentations focused on the survey and data collection methods. We considered all comments from the Federal Register notice and the web presentations and addressed them in the Plan.

Comment: Adequate funding for monitoring has not been identified.

Response: The Service will fund the area frame surveys for the initial baseline survey, including the use of aircraft and pilots to complete the surveys. We will continue to work with the States, tribes, and our other partners to secure funding for future surveys.

Comment: Five-year intervals between monitoring are insufficient.

Response: In order to assess several generations of bald eagles after delisting, this Plan recommends monitoring bald eagle nesting populations at 5–year intervals (which would follow the development cycle to maturity for one generation) for four generations or a total of 20 years. This exceeds the requirements of the ESA. Many States monitor bald eagle nests on an annual basis because the surveys provide valuable resource data. Some States have indicated that their future bald eagle monitoring will be greatly reduced due to its recovery and the need to allocate funding to other areas. Thus, 5–year survey intervals will provide more data for States where surveys are not otherwise planned. It may also provide a cost savings for other States if they can use these data at 5–year intervals to satisfy their needs.

Comment: Twenty-five percent decline is too large of an interval to serve as a trigger mechanism for review.

Response: The goal of the Plan is to detect a 25-percent or greater change in occupied bald eagle nests over any period, measured at 5–year intervals based on an 80 percent chance of detecting such a change. We believe this is a goal that both ensures continued recovery under the ESA and is cost-effective. If a 25-percent decline is detected, it means a reduction to a level still recognized as recovered under the ESA. If such declines are detected, we, in conjunction with the States, will investigate causes of those declines. At the end of the 20–year monitoring program, we will coordinate with States and our other partners to conduct a final review and provide recommendations to ensure a properly managed population of the recovered bald eagle.

Comment: Implementation involves potential sampling bias due to variable observer experience and familiarity with nesting territories.

Response: We have structured training, pre-survey preparation, and survey protocols to minimize potential sampling bias. Though experienced bald eagle observers may be familiar with specific nests, pilot studies showed that the observers were able to change mindsets from ''searching habitat'' in Area plots to ''determining the status of specific known list nests'' in List plots, without issue. Using the dual-observer method to determine individual detection probabilities for observers will help account for differences in observer experience. In planning Area plots survey routes, observers will be given maps that show habitat, but not the location of nests, allowing survey route planning to be based on habitat characteristics.

Comment: Conducting a large-scale monitoring project every 5 years could create staffing problems.

Response: Staffing will require open and clear communication among the States, tribes, and the Service. If State staff are not available for surveys, we will draw upon local Service offices, tribal biologists, retired Service and State employees, and experienced volunteers to fill in as observers.

Comment: There is a lack of a comprehensive monitoring program for environmental contaminants.

Response: We worked with the U.S. Geological Survey to develop a searchable database/library dedicated to contaminants investigations of bald eagle, osprey, and peregrine falcons. The objective was to create a readily available source of information to consider should the bald eagle (or peregrine) population decline. This database provides biologists an overview of the most recent findings of contaminant effects on these species. If additional studies are needed during post-delisting monitoring, the database will clarify what has been studied and what has not.

Comment: The phrase ''broad geographic areas'' in the section on Habitat implies that the analysis of survey data may be accomplished on something less than a rangewide scale.

Response: This is correct. If trends in nest occupancy significantly decline over broad geographic areas, whether rangewide or more regionally, we will investigate a change in available nesting habitat as a possible cause and take appropriate actions, as feasible.

Comment: Customized parameters may be required in certain local situations.

Response: We agree and have modified the Plan accordingly.

Comment: The definition of bald eagle habitat in the Plan, especially the size of water bodies required, may not be appropriate for some geographic regions, especially the Southwest.

Response: We modified the Plan to reflect that local conditions may warrant modifications to the habitat being considered. Input from local eagle biologists will be necessary in these unique or localized conditions.

Comment: Surveys based on Bird Conservation Regions (BCRs) will not work in some States (e.g., eagle distribution is linear and follows major waterways which cross multiple BCRs).

Response: We recognize some of the limitations of this approach, but still maintain it is the most appropriate for application across broad geographic areas. We will work with local biologists to further refine the stratification on a local level.

Comment: The boundary between the Northern Pacific Rainforest BCR and the Great Basin BCR, although correctly mapped in the Plan, is an incorrect depiction of the margin between the two ecoregions. This has resulted in inappropriate numbers being used in calculations of nests in the BCR tables in the Plan.

Response: We have modified this portion of the Plan to reflect that we will work with local biologists and others to further refine the BCR boundaries to more accurately reflect habitat groupings and, as appropriate, modify calculations of nests and nest densities per BCR.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 23, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–17387 Filed 7–21–09; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0082).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for the extension of the currently approved paperwork requirements for Bird Banding and Recovery Reports. This collection consists of two forms (*Application for Federal Bird Banding or Marking Permit* and Reporting Encounter of Marked Bird with a Metal Federal Band (*Recovery Report*) and an electronic database (*Bandit*). We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before August 21, 2009.

ADDRESSES: Please submit written comments on this information collection directly to the Office of

Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail to *OIRA_DOCKET@omb.eop.gov* or fax at 202–395–5806; and identify your submission as 1028–1082. Please also submit a copy of your written comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Use OMB Control Number 1028–0082 in the subject line.

FOR FURTHER INFORMATION CONTACT: Bruce Peterjohn by mail at USGS Patuxent Wildlife Research Center, 12100 Beech Forest Rd., Laurel, MD 20708, or by telephone at (301) 497–5646.

I. Supplementary Information

Abstract: The primary role of the Bird Banding Laboratory (BBL) is to support the use of bird banding and banding data by researchers and managers engaged in science, conservation, and management of birds. The BBL collects information using two forms and one electronic database: (1) Application for Federal Bird Banding or Marking Permit, (2) Reporting Encounter of Marked Bird with a Metal Federal Band (*Recovery Report*), and (3) *Bandit.* Application for Federal Bird Banding or Marking Permit is used to identify individuals and evaluate their purpose, need, and qualifications to hold a permit. The Recovery Report is used by individuals that encounter a banded bird to report the information to the banding lab. All of the information on the bird and the person reporting the bird are stored in the Bandit database. Bandit is an electronic database and is the latest in a long series of programs aimed at helping bird banders manage and submit their data for any number of banded birds. The principal use of Bandit is to store and transfer banding data to the BBL and the Canadian Bird Banding Office (BBO) during bird banding operations.

II. Data

OMB Control Number: 1028–0082.

Title: Bird Banding and Recovery Reports.

Type of Request: Extension of a currently approved collection.

Respondent Obligation: The Recovery Report is voluntary. The Permit Application and Bandit are required to obtain or retain benefits.

Frequency of Collection: On occasion.

Affected Public: Individuals, businesses, universities, organizations, and States.

Estimated Number of Responses: 89,378.

Annual Burden Hours: 28,048 (275 for applications; 4,250 for recovery reports; and 23,523 for *Bandit*).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

On February 6, 2009, we published a **Federal Register** notice (74 FR 6304) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on April 7, 2009. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at anytime. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

USGS Information Collection Clearance Officer: Phadrea Ponds, 970–226–9445.

Dated: July 14, 2009.

Susan D. Haseltine,

Associate Director for Biology, U.S. Geological Survey.

[FR Doc. E9–17370 Filed 7–21–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2009–N110]; [1265–0000–10137–S3]

Guam National Wildlife Refuge, Yigo, Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; notification of open house meetings; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for the Guam National Wildlife Refuge (Refuge) for public review and comment. It describes our proposal for managing the Refuge for the next 15 years. In the Draft CCP/EA we describe alternatives, including our preferred alternative, to manage the Refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we need to receive your written comments by August 24, 2009.

We will hold two public meetings; see **SUPPLEMENTARY INFORMATION** for details.

ADDRESSES: Additional information concerning the Refuge can be found on the Internet at *http://www.fws.gov/guam/.* You may submit comments, requests for more information, or request for copies of the Draft CCP/EA by any of the following methods.

E-mail: FW1PlanningComments@fws.gov. Include ''Guam Refuge'' in the subject line of the message.

Fax: Attn: Project Leader, (671) 335–5098.

U.S. Mail: Project Leader, Guam National Wildlife Refuge, P.O. Box 8134, MOU–3, Dededo, Guam 96912.

FOR FURTHER INFORMATION CONTACT: Project Leader, (671) 355–5096.

SUPPLEMENTARY INFORMATION:

Introduction

The unincorporated U.S. territory of Guahan (Guam) is the largest and southernmost island in the Marianas Archipelago, a chain of volcanic islands in Micronesia. Guahan Island is situated in the western Pacific Ocean, approximately 3,800 miles west of Honolulu and 1,500 miles south of Tokyo. The Refuge was established in 1993. It is comprised of three units: The Andersen Air Force Base Overlay Refuge Unit, the Navy Overlay Refuge

Unit (collectively, the overlay units), and the Ritidian Unit. Through cooperative agreements with the U.S. Air Force and the U.S. Navy, we manage, but do not have exclusive jurisdiction on, the lands that comprise the overlay units. The Ritidian Unit, known to Native Chamorros as Puntan Litekyan, is located on the northern tip of Guam, and encompasses 1,217 acres, including 385 terrestrial acres and 832 acres of submerged offshore area. The Ritidian Unit is the only land over which the Service has exclusive jurisdiction in Guam.

Guam's native wildlife—especially most tropical birds—are conspicuously absent, attributed in large part to the introduction of the brown treesnake (BTS), a non-native species that preys on Guam's native bird species in forested habitats. In 2004 the Service designated critical habitat for the Mariana fruit bat (Fanihi), Guam Micronesian kingfisher (Sihek), and Mariana crow (å'ga). The 385 terrestrial acres of the Ritidian Unit are the only designated critical habitat on Guam for these species.

The focus of our Guam Refuge Draft CCP/EA is the Ritidian Unit. The U.S. Air Force and the U.S Navy are preparing Integrated Natural Resource Management Plans (INRMP) that will address resource management for the overlay units. Our CCP/EA and the INRMPs will fulfill CCP requirements for all units of Guam National Wildlife Refuge.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Public Outreach

We began the public scoping phase of the planning process for the Draft CCP/EA by publishing a Notice of Intent in the **Federal Register** on July 6, 2007 (72 FR 37037), announcing our intent to complete a CCP/EA for the Refuge and inviting public comments. Our public outreach efforts are described in the following paragraphs.

In July 2007, we distributed Planning Update 1 to our project mailing list and public outlets located near the Refuge.

On July 14, 2007, we held a public scoping meeting at the Refuge office, and from July 15 through July 22, 2007, the Refuge's Visitor Center hosted an informal open house to meet the public and obtain comments on management issues. These opportunities were announced through local media via a press release, on the Refuge's Web site, and in Planning Update 1.

In November 2007, we distributed Planning Update 2, which included a summary of the comments received during the scoping period, a planning schedule, and description of the scope of the project.

Draft Alternatives We Are Considering

The Service identified and evaluated three alternatives for managing the Refuge for the next 15 years, including a No Action Alternative (Alternative A). Brief descriptions of the alternatives follow.

Alternative A (No Action)

This alternative assumes continuation of current management programs and is considered the base from which to compare the action alternatives.

Alternative B (Preferred Alternative)

This alternative describes a considerable, but short term increase in the wildlife and habitat management program on the Refuge's Ritidian Unit. The Refuge proposes to construct a multi-species barrier to greatly reduce populations of brown treesnakes, feral ungulates, and non-native pest species on the refuge. Long term maintenance of the program would be less than the program described for Alternative C. Visitor services and historical and cultural resource programs would increase under Alternative B from existing programs.

Alternative C

This alternative describes a modest initial increase in the wildlife and habitat management program on the Ritidian Unit. In it we propose to develop an ungulate barrier to reduce the number of feral ungulates on the Refuge and to conduct a moderately intense brown treesnake control program. Long term maintenance of the brown treesnake control program would require greater effort than the multi-species barrier described under Alternative B. Visitor services under Alternative C would focus on wildlife-dependent public uses only. In addition, refuge staff would increase the number of off-site environmental education programs. The historical and cultural resources program would remain relatively unchanged from existing programs.

Public Availability of Documents

In addition to the methods listed in **ADDRESSES**, you can obtain copies of the Draft CCP/EA on compact disk upon request from the Refuge at phone number (671) 355–5096. Copies of the Draft CCP/EA may also be reviewed at the Refuge. The Draft CCP/EA is also available for viewing and downloading on the Internet at *http://www.fws.gov/guam/*. Printed copies will be available for review at the following libraries: Hagåtña Library, 254 Martyr Street, Hagåtña, Guam 96910–5141; and Dededo Library, 283 West Santa Barbara Avenue, Dededo, Guam 96912.

Public Meetings

Two Public Meetings will be held to provide people an opportunity to learn more about the alternatives analyzed in the Draft CCP/EA. Public comments will be collected and recorded at the meetings. Meeting dates, times, and locations follow.

1. August 4, 2009, from 6 p.m. to 8 p.m. at the Dededo Community Center, 319 Iglesia Circle, Dededo, Guam 96929.

2. August 6, 2009, from 6 p.m. to 8 p.m. at the Hagatna Community Center, 236 East O'Brian Drive, Hagatna, Guam 96910.

Submitting Comments

Public comments are requested on the Draft CCP/EA, and will be considered and incorporated throughout the planning process. Comments on the Draft CCP/EA will be analyzed by the Service and addressed in final planning documents. All comments received from individuals become part of the official public record and may be released. Requests for such comments will be handled in accordance with the Freedom of Information Act, (5 U.S.C. 552), NEPA regulations, and Service and Department of the Interior policies and procedures.

Next Steps

We will consider the comments we receive during the current comment period and the comments we received during the earlier stages of the planning process, and address them in the final CCP and decision document.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 8, 2009.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E9–17145 Filed 7–21–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Fredericksburg and Spotsylvania National Military Park, Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare a General Management Plan and Environmental Impact Statement, Fredericksburg and Spotsylvania National Military Park.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service is preparing a General Management Plan and Environmental Impact Statement (GMP/EIS) for the Fredericksburg and Spotsylvania National Military Park (FSNMP). The park comprises approximately 8,382 acres, in the commonwealth of Virginia, in the city of Fredericksburg, and in the counties of Spotsylvania, Stafford, Orange, and Caroline.

Prepared by park staff and planners in the NPS Northeast Region, with assistance from advisors and consultants, the GMP/EIS will propose a long-term approach to managing the FSNMP. Consistent with the park's purpose, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the park over the next 15 to 20 years. The GMP/EIS will address a range of management alternatives for natural and cultural resource protection, visitor use and interpretation, park carrying capacity, facilities development and operations. A ''no action'' alternative will also be considered and an agency preferred management alternative identified. The alternatives will incorporate various zoning and management prescriptions to ensure resource preservation and public appreciation of the park. The environmental consequences that could result from implementing the various alternatives will be evaluated for cultural and natural resources, visitor experience, park operations, and the socioeconomic environment. Major issues to be explored include: measures for the preservation of resources; indications of the types and general intensities of development; identification of, and implementation commitments for, visitor carrying capacities; and indications of potential boundary modifications.

Meeting Notices: The public is invited to express views, issues and concerns about the long-term management of FSNMP early in the process through public meetings and other media; and will have an opportunity to review and comment on a draft GMP/EIS. Public scoping meetings will be scheduled and consist of a discussion of the GMP/EIS process including ways that the public can be involved in providing and receiving information, and reviewing and commenting upon the draft GMP/EIS. The place and time of public scoping meetings will be announced by the NPS and noticed in local newspapers serving the area. Scoping and other periodic public meeting notices and information regarding the GMP/EIS will also be placed on the NPS Planning, Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/frsp*) for continuing public review and comment.

ADDRESSES: Information related to ongoing public involvement opportunities will be provided online at the FSNMP Web site (*http://www.nps.gov/frsp*) and on the NPS PEPC Web site (*http://parkplanning.nps.gov/frsp*). Requests to be added to the project mailing list may be made electronically through the NPS PEPC Web site or by directing requests to the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Russ Smith, Superintendent, Fredericksburg and Spotsylvania National Military Park, 120 Chatham Lane, Fredericksburg, VA 22405–2508, Telephone: 540–371–0802.

Megan Lang, Community Planner/Project Manager, National Park Service, Park Planning and Special Studies, 200 Chestnut Street, Philadelphia, PA 19106, Telephone: 215–597–8875.

SUPPLEMENTARY INFORMATION: If you wish to comment on the GMP/EIS, you may submit your comments by any one of several methods. You may mail comments to contacts listed above or you may submit comments electronically through the NPS PEPC Web site (*http://parkplanning.nps.gov/frsp*). 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.

Michael T. Reynolds,

Deputy Regional Director, Northeast Region, National Park Service.

[FR Doc. E9–17375 Filed 7–21–09; 8:45 am]

BILLING CODE 4310–77–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final General Management Plan and Environmental Impact Statement, Governors Island National Monument, New York, NY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Record of Decision on the Final General Management Plan and Environmental Impact Statement for Governors Island National Monument.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the National Park Service (NPS) announces the availability of the Record of Decision for the Final General Management Plan and Environmental Impact Statement (GMP/EIS) for Governors Island National Monument, New York. On June 1, 2009, the Regional Director, Northeast Region, approved the Record of Decision for the GMP/EIS, selecting Alternative D, The Harbor Center, which was described as the preferred alternative in the Final GMP/EIS issued on April 26, 2009. As soon as practicable, the NPS will begin to implement the selected alternative. The National Monument will be developed as a Harbor Center with partners as a hub of activities and a

jumping-off point for visitors exploring New York Harbor. This course of action and three other alternatives were presented and analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

Copies of the Record of Decision may be obtained from the contact listed below or online at the NPS Planning, Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/gois*).

FOR FURTHER INFORMATION CONTACT: Patti Reilly, Superintendent, Governors Island National Monument, Battery Maritime Building, Slip 7, 10 South Street, New York, NY 10004, 212–825–3040.

SUPPLEMENTARY INFORMATION: The NPS selected alternative develops Governors Island National Monument as the Harbor Center—a hub of activities and jumping-off point for visitors wanting to explore New York Harbor.

Working with other harbor-related organizations—national parks and local, regional, national and international civic, educational and research organizations—the NPS would develop a range of activities in Fort Jay and Castle Williams that interpret the key themes of the island and greater harbor. The park would collaborate and coordinate on harbor–related programs on and off Governors Island that would help visitors understand the forts' military significance, the island's strategic location, and the ongoing ecological conservation efforts for the harbor and the re-visioning and redevelopment of the waterfront.

Governors Island National Monument would become a primary stop on harbor ferry tours. Programs would include specialized boat tours of the harbor, educational programs that explore the harbor's history and ecology.

A variety of programs, exhibits, and special events would be available in both forts. These activities would use the harbor to describe the island's history and significance, and the interplay over time between the harbor and the city's health and economy.

Fort Jay would house harbor research, offices and temporary lodging for NPS sponsored fellowship and residency programs; and be the setting for harbor related seminars and workshops.

Castle Williams would be the island's main exhibit and interpretive center, showcasing multimedia programs and interactive exhibits that explore local, national, and global topics associated with Governors Island and New York Harbor.

The selected alternative would seek to accomplish the following broad goals:

• *Preserve the National Monument's historic resources for the enjoyment of present and future generations.* Management would make historic preservation of Fort Jay and Castle Williams its highest priority.

• *Offer visitors multiple and varied opportunities to explore and understand the National Monument.* Public access to the National Monument would be convenient and affordable. Dock 102 would have a new contact station which would serve as an information and orientation center; Building 140 would continue to be another welcoming center with a bookstore.

• *Operate the National Monument as part of the larger island.* The NPS would cooperate with organizations, including Governor's Island Education and Preservation Corporation (GIPEC), to make Governors Island an educational and civic resource of special historic character, and a recreational and open–space resource for the people of New York and the United States.

The combination of preservation and programming activities would make the National Monument a major New York City and Harbor attraction, drawing local visitors back repeatedly and drawing national and international audiences.

The planning team has completed the evaluation and found that an adjustment to include the remainder of the *glacis* (approximately 10 acres) would meet the official criteria and would be justifiable under certain circumstances.

In addition to the selected alternative, three other alternatives, including a no-action alternative, were presented and analyzed in the Draft and Final Environmental Impact Statements. To help guide and structure the formulation and analysis of the alternatives, a set of criteria and goals were established by the planning team; each alternative had to meet these goals in its own way:

Resource Preservation Goals

• The uses of Fort Jay, Castle Williams, and other resources managed by the NPS are compatible with the purpose and significance of the National Monument.

• The island's other important resources and values that provide the context and add to the significance to the National Monument, including archeological resources, historic structures, and cultural landscapes, are preserved.

Visitor Experience Goals

• Visitors are well oriented, comfortable and safe throughout their trip, including time at off-island departure points, on ferries, and while visiting the National Monument.

• A variety of communications tools convey necessary information to visitors before, during, and after their visit, about the National Monument's resources and programs, and opportunities to enjoy other NPS sites in the New York region.

• Visitors understand the history of the island and the people who lived and worked there, and appreciate the island's place in the history of New York Harbor and the nation.

• Regular feedback from visitors enables National Monument staff to improve and enhance public programming and services.

• Facilities and services within the National Monument and on the greater island meet visitors' basic needs and enrich the overall experience, drawing visitors back to the island.

Transportation Goals

• Access to the National Monument is convenient, reliable, and available to visitors at a reasonable cost. Access is coordinated with the extensive public transportation network of the New York metropolitan area.

• Ferries and on-island transportation systems employ sustainable technologies and are accessible to all National Monument visitors, staff, and contractors. When feasible, on-island transportation systems are shared and coordinated with other island organizations.

Park Administration Goals

• Administrative, interpretive, maintenance, and other staff, as well as facilities and other infrastructure, sustain the programs and operations of the National Monument and accomplish the NPS mission.

• National Monument staff enjoy healthy and safe working conditions.

Collaboration and Partnership Goal

• Formal partnerships and informal associations with other agencies and organizations assist with the preservation and public enjoyment of the National Monument. These partnerships and other collaborative projects support the NPS and National Monument missions.

After careful consideration and review of the purpose and significance of Governors Island National Monument and its establishing Presidential Proclamations, other laws and policies including the Organic Act, National

Environmental Policy Act, National Historic Preservation Act and the *2006 NPS Management Policies,* and input received from the public during the planning process, Alternative D was chosen by NPS as the alternative to be implemented. Compared to all the alternatives considered, the selected alternative best fulfills the mandates of the Presidential Proclamations, the purpose and significance, and the other laws and policies guiding the NPS and the Monument. By partnering with others to help protect, interpret and educate visitors about the Monument, the island and New York Harbor, the Monument's long-term future, viability and relevance is assured.

The selected alternative best protects park resources while also providing high-quality visitor experiences including effective educational and interpretive programs focused on Governors Island National Monument's purpose, significance and goals. Implementation of the selected alternative will not result in the impairment of park resources and values. Provisions in the selected alternative are incorporated to protect and enhance the park's cultural and natural resources, and provide for high-quality visitor experiences. Negative impacts are minor or moderate in intensity. Overall, the selected alternative will have beneficial effects on cultural and natural resources, the visitor experience and park operations.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a list of measures to minimize environmental harm, and an overview of public involvement in the decision-making process. This decision is the result of a public planning process that began in 2003. Between 2003 and 2007, prior to the release of the Draft GMP/EIS, NPS staff met with and briefed representatives from numerous agencies and organizations about the GMP and NPS's future plans on Governors Island. Additional public involvement activities followed the release of the Draft GMP/EIS and a detailed analysis of public comment with NPS responses was provided in the Final GMP/EIS. The official responsible for this decision is the NPS Regional Director, Northeast Region.

Dated: June 11, 2009.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. E9–17376 Filed 7–21–09; 8:45 am]

BILLING CODE 4312–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket Number FWS–R9–MB–2009–N0097; 91200–1231–9BPP]

Migratory Birds; Take of Peregrine Falcons for Use in Falconry

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: In December 2008 we completed an Environmental Assessment on take of peregrine falcons for use in falconry. This notice is to inform the public of the allocation of take of nestling and migrant peregrine falcons in 2009 agreed on by the States. It also will inform interested individuals about which States will allow take of nestling or migrant peregrine falcons.

FOR FURTHER INFORMATION CONTACT: Dr. George Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703–358–1825.

SUPPLEMENTARY INFORMATION: Our authority to govern take of raptors is derived from the Migratory Bird Treaty Act (16 U.S.C. 703–712), which prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors (birds of prey) listed in 50 CFR 10.13 unless the activities are allowed under Federal regulations. Take and possession of raptors for use in falconry is governed by regulations at 50 CFR 21.29.

In 2007, we completed an Environmental Assessment (EA) on falconry and raptor propagation take (72 FR 31268; June 6, 2007), in which we selected an alternative that will ensure that take of raptors for these purposes will be well below levels that will affect their populations. However, that EA did not consider of take of fall migrant peregrine falcons (*Falco peregrinus*), which may originate outside the United States.

We completed an EA on take of migrant peregrine falcons in 2008 (73 FR 74508; December 8, 2008). Our preferred alternative was to allow take of 116 nestling and postfledging first-year peregrine falcons from the nesting period through 31 August west of 100 degrees W longitude (including Alaska), and allow a take of 36 first-year migrant peregrine falcons between 20 September and 20 October from anywhere in the United States east of 100 degrees W longitude.

Allocation of the 36 fall migrant peregrine falcons to be taken from the United States east of 100 degrees W longitude was agreed upon by the Atlantic, Mississippi, and Central Flyways. We expect the allowed take of the fall migrants in 2009 to be as follows:

State	Allowed take
Maryland	4
Virginia	4
North Carolina	3
South Carolina	2
Georgia	5
Arkansas	3
Mississippi	3
Oklahoma	2
Texas	10
Total	36

In the western United States, the Central and Pacific Flyways allocation complies with the provisions of our 2008 Final Environmental Assessment, to total no more than 41 nestlings in Alaska and 75 in the remaining western States. We expect take of nestling peregrines to be allowed in 2009 in 9 States, as follows:

State	Allowed take
Alaska	6
Washington	9
Idaho	0
Montana	5
Oregon	7
Utah	11
Wyoming	5
California	0
Nevada	0
Colorado	4
Arizona	8
New Mexico	2
Total	57

Western States continue to have the authority to determine allocation of take of nestlings. Take in previous years has been much less than we allowed, and has been consistent with other take of raptors for falconry. Therefore, after this year we will not publish information about allocation of nestling take.

We expect the Flyways to review the allocation of the take of passage peregrines each year. We will continue to work with them on the issue, and may publish notices about it in the future. As noted in the Final EA on take of migrant peregrines, we will review

population and harvest data for Canada, the U.S., and Mexico every five years, or at the request of the Flyway Councils, to reassess the allowable harvest limits. We will publish a Notice in the **Federal Register** if we determine that the take of nestling or fall migrant peregrines should be changed.

Interested individuals will need to contact each State that will allow take of peregrine falcons to learn whether the State will allow take by a resident of another State.

Dated: June 3, 2009.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–16923 Filed 7–21–09; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1034 (Review)]

Certain Color Television Receivers From China

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in May 2009 to determine whether revocation of the antidumping duty order on certain color television receivers from China would be likely to lead to continuation or recurrence of material injury. On July 1, 2009, the Department of Commerce published notice that it was revoking the order effective June 3, 2009, ''{b}ecause the domestic interested parties did not participate in this sunset review * * *'' (74 FR 31409). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: *Effective Date:* June 3, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: July 16, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–17311 Filed 7–21–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 16, 2009, a proposed de minimis party consent decree (''Consent Decree'') in *United States, et al.* v. *George A. Whiting Paper Co., et al.,* Civil Action No. 1:09–cv–00692 was lodged with the United States District Court for the Eastern District of Wisconsin.

In this action the United States and the State of Wisconsin sought to recover unreimbursed costs incurred for response activities undertaken in response to the release and threatened release of hazardous substances from facilities at and near the Lower Fox River and Green Bay Site in northeastern Wisconsin and damages for injury to, loss of, or destruction of natural resources in order to compensate for and restore natural resources injured by the release of hazardous substances into the environment at the Site.

The eleven settling defendants are: George A. Whiting Paper Co.; Green Bay Metropolitan Sewerage District; Green Bay Packaging, Inc.; Heart of the Valley Metropolitan Sewerage District; International Paper Co.; Lafarge North America Inc.; Leicht Transfer & Storage Co.; Neenah Foundry Co.; The Procter & Gamble Paper Products Co., Union Pacific Railroad Co.; and Wisconsin Public Service Corp. The Consent Decree reflects the conclusion of the United States and the State of Wisconsin that each of the Settling Defendants qualifies for treatment as a CERCLA Section 122(g) *de minimis* party. The proposed Consent Decree requires the Settling Defendants to make a collective payment of $1,875,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *George A. Whiting Paper Co., et al.,* D.J. Ref. 90–11–2–1045/7.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Wisconsin, 530 Federal Building, 517 East Wisconsin Avenue, Milwaukee, WI 53202, and at U.S. EPA Region Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–17489 Filed 7–21–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 16, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is

not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Unemployment Compensation for Federal Employees Handbook No. 391.

OMB Control Number: 1205–0179.

Agency Form Numbers: ETA–931; ETA–931A; ETA–933; ETA–934; and ETA–935.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 15,204.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: Federal law (5 U.S.C. 8501–8509) provides unemployment insurance protection to formerly or partially unemployed current Federal Civilian employees. The forms in Handbook 391 are used in conjunction with the provisions of the Unemployment Compensation for Federal Employees Act Program. For additional information, see related notice published at Volume 74 FR 14581 on March 31, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–17357 Filed 7–21–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

American Recovery and Reinvestment Act of 2009; Notice of Availability of Funds and Solicitation for Grant Applications for the Health Care Sector and Other High Growth and Emerging Industries

Announcement Type: Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 09–01.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.275.

Key Dates:

The closing date for receipt of applications under this announcement is October 5, 2009. Applications must be received no later than 4 p.m. Eastern Time. A pre-recorded Webinar will be on-line (*http://www.workforce3one.org*) and accessible for viewing on August 12, 2009 by 3 p.m. Eastern Time, and will be available for viewing anytime after that date. While a review of this webinar is encouraged it is not mandatory that you view this recording.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment & Training Administration, Division of Federal Assistance, Attention: Donna Kelly, Grant Officer, Reference SGA/DFA PY 09–01, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210. For complete ''Application and Submission Information,'' please refer to Section IV.

SUMMARY: The Department of Labor (DOL, or the Department) announces the availability of approximately $220 million in grant funds authorized by the American Recovery and Reinvestment Act of 2009 (the Recovery Act) for projects that provide training and placement services to help workers pursue careers within the industries described in the Background section, Part B of this SGA. The purpose of the high growth and emerging industries grants funded through this SGA is to teach workers the necessary skills for, and help them pursue careers in, health care and other high growth and emerging industry sectors. Eligible applicants include public entities and private nonprofit organizations. Additional specific eligibility guidance is included in Section III.A, ''Eligible Applicants and Required Partnerships.'' ETA intends to fund 45–65 grants ranging from approximately $2 to $5 million.

Approximately $25 million of the total funds available through this Solicitation will be reserved for projects serving communities impacted by automotive-related restructuring, though the Department reserves the right to change this amount depending on the quantity and quality of applications submitted under this SGA. See Attachment I for a list of communities impacted by automotive-related restructuring.

Background

A. Recovery Act: Competitive Grants for Worker Training and Placement in High Growth and Emerging Industry Sectors

On February 17, 2009, President Barack Obama signed into law the Recovery Act, through which Congress intended to preserve and create jobs, promote the nation's economic recovery, and assist those most impacted by the recession. Among other funding directed toward the Department, the Recovery Act provides $750 million for a program of competitive grants for worker training and placement in high growth and emerging industries. Of the $750 million allotted for competitive grants, the Recovery Act designates $500 million for projects that prepare workers for careers in the energy efficiency and renewable energy industries described in Section 171(e)(1)(B) of the Workforce Investment Act (WIA). The Recovery Act further provided that in awarding grants for the remaining $250 million, projects that prepare workers for careers in the health care sector would receive priority. DOL intends to use a portion of the $250 million for providing technical assistance for this program of grants. DOL also intends to use a portion of these resources to promote the creation of a virtual tool that helps workers learn about and prepare for careers in health care. These efforts will help participants find and retain employment, while leveraging other Recovery Act investments intended to create jobs and promote economic growth.

The following sub-sections provide background information on the health care sector, as well as on the other sectors on which applicants could focus.

B. Health Care and Other High Growth and Emerging Industries

1. Health Care Sector

As many industries experience lay-offs and job losses, the health care industry remains a critical driver in regional economies across the nation. In March 2009, the U.S. Bureau of Labor Statistics (BLS) reported that the health care sector continued to grow, despite steep job losses in nearly all major industries. Hospitals, long-term care facilities, and other ambulatory care settings added 27,000 new jobs in February 2009, the same month when 681,000 jobs were eliminated nationwide.

Health care providers are large employers that contribute significantly to the strength of regional economies. The BLS projects that health care employers will generate 3 million new wage and salary jobs between 2006 and 2016, with the education and health services sector projected to grow by 18.8 percent, adding more jobs (nearly 5.5 million) than any other industry sector.

Employment growth in the health care sector will be driven by significant increases in demand for health care and assistance because of an aging population and longer life expectancies. In addition, projected retirements for current health care workers will necessitate a pipeline of skilled individuals ready to enter health care occupations.

The absence of qualified workers in this diverse sector threatens the quality and availability of medical care, and the economic stability and growth potential of local communities in rural, urban, and suburban areas. Moreover, the growing complexity of health care delivery, including changing technologies and introduction of advanced medical devices, will require both incumbent workers and new entrants to continuously upgrade their skills. Although job opportunities exist for workers without extensive specialized training, most health care occupations require training leading to a vocational license, certificate, or degree.

ETA will accept proposals targeting any of the industry's sub-sectors, and is particularly interested in receiving applications that focus on one or more of the following health care sub-sectors and occupational categories:

i. Nursing

Recent trends in the delivery of health care services increasingly rely on highly skilled nurses working with allied health professionals in supporting clinical roles. Nursing roles range from primary patient care to case management and directing complex health care systems.

Shortages of Registered Nurses (RNs), Licensed Practical Nurses (LPNs), Vocational Nurses, and Certified Nursing Assistants (CNAs) threaten the provision of quality care. The BLS projects that employment for RNs will grow faster than any other occupation through 2012. In response to the general increase in demand for health care services, employment of LPNs is expected to grow 14 percent, faster than the average for all occupations.

ETA is interested in projects that provide training and support career progression along the nursing career pathway, as well as short-term skills certification or credentialing that enables incumbent workers to advance along a career ladder/lattice in health care. These include licenses, certificates, and degrees from accredited nursing programs that lead to the Associate Degree of Nursing (ADN) or vocational licensure for LPNs, and positions as CNAs. ETA is also interested in academic strategies that help incumbent workers advance from an ADN to the bachelor's degree in nursing (BSN) since many RNs with an ADN find it beneficial to enter bachelor's programs to prepare for a broader scope of nursing practice.

Applicants that focus on nursing could foster transitions along articulated career pathways for graduates of education and training programs at a community college, vocational training program, or a Registered Apprenticeship program that help them qualify for entry-level and mid-level nursing positions such as a CNA, LPN, or RN.

ii. Allied Health

According to the Association of Schools of Allied Health Professions (ASAHP), the term allied health is used to identify a cluster of health professions that covers as many as 100 occupational titles, exclusive of physicians, nurses, and a handful of others. Acute workforce shortages and projected growth exist for allied health occupations, such as medical assistants, respiratory therapists, pharmacy technicians, diagnostic medical sonographers, paramedics, and radiological and other technicians. The BLS projects that by 2016, medical assistant occupations are expected to grow 35 percent, paramedic occupations are expected to grow by 19 percent, and radiological technicians by 15 percent. According to the Department of Health and Human Services (HHS), Health Resource and Services Administration, occupational growth for community health workers is also projected as communities seek to build effective linkages with the health care system to provide health education and information, advocate for underserved individuals to receive appropriate services, and build the capacity of the community in addressing health issues.

Particularly in hospitals and in medical laboratories away from patient care settings, ETA is interested in investments that provide talent development strategies that support recruitment, retention, and career pathways in related allied health occupations.

iii. Long-Term Care

Workers in Long-Term Care settings assist older individuals and others with disabilities and chronic diseases through employment as CNAs, home health specialists, and other direct care occupations. The demand for long-term health care services has begun to increase dramatically as regions across the country have started to experience significant demographic shifts. Currently, the American Health Care Association estimates that long-term care occupations represent 4.5 million workers. By 2010, BLS projects that this workforce will expand by 800,000 jobs for direct care workers alone in long-term care settings. In 2008, the Institute of Medicine of the National Academies (IOM) determined that between 2005 and 2030, the number of adults aged 65 and older is estimated to rise from 37,000,000 to over 70,000,000, almost doubling the overall size of the population of older adults in the United States. The IOM concluded that the health care workforce lacked the capacity, in both size and ability, to meet the mounting needs of the elderly.

ETA is interested in projects that provide training for and support educational paths to careers in long-term care occupations, which include CNAs, home health aides, home and personal care workers, direct support professionals and RNs working in long-term care settings.

iv. Health Information Technology

Health Information Technology (HIT) refers to the juncture of information management, medical practice, and the complex business of health care delivery. HIT leverages information management training and resources to improve quality and efficiency standards in the health care industry. According to HHS, Office of the National Coordinator for Health Information Technology (ONC), ensuring the secure use of personal health information will improve the

coordination of care, as well as prevent medical errors through data sharing.

The transition from traditional, paper-based medical files to electronic health records (EHR) technologies will provide expanded career pathways in health information management and technology. HIT jobs will be created in hospitals, physicians' offices, home healthcare and outpatient clinics, and residential care facilities. Further, comprehensive reforms in health law and policy will require new and updated skill sets for a range of clinical occupations (including nursing and allied health professionals), medical record technicians, coders, health information technicians, and other health information technology professionals including but not limited to clinical informaticists. The Health Care Information and Management Systems Society estimates there are approximately 108,400 HIT jobs in hospital settings currently and expects workforce needs to require an additional 40,800 HIT occupations by 2012.

ETA is interested in projects that design state-of-the-art training and support progression in career pathways for the health information workforce using a variety of learning strategies for individuals who want to specialize in the management of health information, as well as workers who must use HIT to perform the duties of their jobs.

2. Other High Growth and Emerging Industries

ETA also seeks to promote broad-based economic recovery by supporting the workforce and training needs of workers and employers in other high growth and emerging industries. ETA recognizes that in some specific regions industries continue to grow, while in other regions industries have been negatively impacted by the economic downturn but are expected to experience job growth as the economy begins to recover. Further, some industries are being transformed by technology and innovation, requiring new skill sets for workers. Fields like information technology, advanced manufacturing, wireless and broadband deployment, transportation and warehousing, and biotechnology may be high growth and emerging industries in specific regional economies, offering jobs and solid career paths left vacant due to a lack of qualified workers. For example, in advanced manufacturing sectors, transformations in business processes and technologies are driving the need for workers to have increasingly complex skills and competencies provided through the use of effective training approaches, such as mobile skills training.

ETA is soliciting grant applications that address current and forecasted workforce shortages, and provide workers with paths to career enhancing opportunities in high growth, high demand, and economically vital sectors of the American economy. ETA will target education and skills development resources toward helping workers gain skills needed to build successful careers in these and other growing industries.

ETA encourages applicants to define local high growth or emerging industries in the context of their state or regional economy by showing how the industry aligns with and fits into their state or regional strategy. An industry targeted by applicants must meet the following criteria to be considered a high growth or emerging industry in a local area for the purposes of this SGA: (1) It is projected to add substantial numbers of new jobs to the economy; (2) it is being transformed by technology and innovation requiring new skill sets for workers; or (3) it is a new and emerging industry projected to grow. Applicants may draw from a variety of resources for supporting data that demonstrates that an industry is high growth or emerging, including: Traditional labor market information, such as projections; industry data from trade or industry associations, labor organizations, or direct information from the local employers or industry; information on the local and regional economy from economic development agencies; and other transactional data, such as job vacancies. Applications must include strong supporting evidence and data that are current, relevant, and specific to the local areas or communities where grant-funded training and placement activities will be conducted.

C. Working With Other Recovery Act Programs

The Recovery Act made funds available to a number of other Federal programs that will impact the creation and expansion of health care occupations and other high growth and emerging industries. DOL is partnering with other Federal agencies to support the creation of jobs by developing a pipeline of skilled workers in the health care industry and other high growth and emerging industries. Where possible, ETA encourages applicants to connect their workforce development strategies to other Recovery Act funded projects that create jobs or impact the skill requirements of existing jobs. ETA recommends that applicants review other parts of the Recovery Act. For example, there are specific Recovery Act activities related to health care through the Department of Education and HHS, Health Resource and Services Administration. For other high growth and emerging industries, it may be appropriate to review other Recovery Act programs from the Department of Energy, Department of Transportation, etc. For links to federal agency Recovery Act Web sites, please visit *http://recovery.gov/?q=content/agencies.*

I. Funding Opportunity Description

Grants under this SGA will fund projects that provide workers with training that will prepare them to enter and advance in the health care sector, as well as other high growth and emerging industries, as described in part B of the Background section of this SGA. Individuals eligible to receive training include unemployed workers, dislocated workers, and incumbent workers including low-wage workers. Within these categories, grantees may serve a wide range of individuals, such as individuals on public assistance, high school dropouts, individuals with disabilities, veterans, and individuals with Limited English Proficiency. A portion of the funds under this SGA will be reserved (as described in Section II, Award Information) for projects serving communities impacted by automotive-related restructuring.

Successful training programs funded through this SGA will prepare participants for employment within the health care sector or other high growth and emerging industries, and will: (1) Target skills and competencies demanded by the industries described in part B of the Background section of this SGA; (2) support career pathways, such as an articulated career ladder or lattice; (3) result in an employer- or industry-recognized certificate or degree (which can include a license, as well as a Registered Apprenticeship certificate or degree); (4) combine supportive services with training services to help participants overcome barriers to employment, as necessary; and (5) provide training services at times and locations that are easily accessible to targeted populations.

To ensure quality training within a limited timeframe, applicants are strongly encouraged to use existing curricula and strategies to deliver training. Where appropriate, applicants may modify existing curricula. Recognizing the long-term needs of workers, it is strongly recommended that training lead to portable industry-recognized certificates or degrees.

II. Award Information

A. Award Amount

Under this SGA, ETA intends to award approximately $220 million in grant funds. To prioritize health care projects, ETA expects to allot approximately $125 million of the designated funds for projects in the health care sector. However, the Department reserves the right to change this amount depending on the quantity and quality of applications submitted under this SGA. The remaining balance of funds will be allotted for projects in other high growth and emerging industries. ETA intends to fund 45–65 grants ranging from approximately $2 to $5 million. ETA does not expect to fund projects for less than $2 million. However, this does not preclude funding grants at a lower amount based on the type and the number of quality submissions. ETA will not fund projects for more than $5 million, and applications requesting more than $5 million will be considered non-responsive. Within the funding ranges specified above, applicants are encouraged to submit proposals for quality projects at whatever funding level is appropriate to the project.

Approximately $25 million of the total funds available through this Solicitation will be reserved for projects serving communities impacted by automotive-related restructuring, though the Department reserves the right to change this amount depending on the quantity and quality of applications submitted under this SGA. See Attachment I for a list of counties impacted by automotive-related restructuring. The Center for Automotive Research identified the attached list of 312 U.S. counties that either have an automotive assembly plant or parts manufacturer employing regional residents. Only communities that are included on The Center for Automotive Research list will qualify for this status.

B. Period of Performance

The period of grant performance will be up to 36 months from the date of execution of the grant documents. This performance period includes all necessary implementation and start-up activities; the completion of training activities and the award of employer- or industry-recognized certificates or degrees; and participant follow-up. The Department intends that all grantees implement the training and placement programs funded under this SGA as soon as possible. Further, applicants should plan to fully expend grant funds during the period of performance, while ensuring full transparency and accountability for all expenditures.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants are public entities or private nonprofit entities. Applicants must be legal entities and may include local Workforce Investment Boards and their One Stop Systems, Tribal organizations, education and training providers, labor organizations, health care providers, and faith-based and community organizations. The applicant must be the fiscal agent for the grant. An organization may not submit multiple applications in response to this SGA. However, an organization that submits an application for this SGA is not precluded from participating as a partner in applications submitted by other applicants in response to this SGA.

B. Strategic Partnerships

To be eligible for funding under this SGA, applicants must demonstrate that the proposed project will be implemented by a robust strategic partnership.

i. Required Partners

The strategic partnership must include at least one entity from each of the following three categories:

- The public workforce investment system, such as local Workforce Investment Boards and their One Stop systems;
- Public and private employers, such as health care providers when appropriate, and industry-related organizations; and
- The education and training community, which includes the continuum of education from secondary schools to community and technical colleges, four-year colleges and universities, apprenticeship programs, technical and vocational training institutions, and other education and training entities.

By including all of these types of organizations in a comprehensive partnership, applicants can ensure they are maximizing available resources and organizational expertise for each project, and that individual participants within the project have all of the support they need to successfully complete training, overcome barriers to employment, and obtain jobs and advance along career ladders. These partners can contribute a wide array of knowledge and activities to each project, and must work together to ensure that they leverage each other's expertise and resources. The role of the workforce investment system must include identifying and referring candidates for training, and may include assessing potential participants, connecting and placing participants with employers that have existing job openings, and providing supportive services to help participants overcome barriers to training or employment. Employers and industry-related organizations, such as Federally Qualified Health Centers and other health care employers, should be actively engaged in the project and may contribute to many aspects of grant activities, such as defining the program strategy and goals, identifying necessary skills and competencies, providing resources to support training (equipment, instructors, funding, internships, or other work-based learning activities or situations, etc.), and, where appropriate, hiring qualified program participants. Education and training providers must partner with employer and/or industry-related organizations to ensure that education and training programs address the skills required for the targeted industries, lead to employer- or industry-recognized certificates or degrees, and ensure that the training strategies reflect the needs of both workers and employers.

ii. Other Partners

In addition to the required partners listed in Section III.B.i, applicants are strongly encouraged to include other partners that can provide resources or expertise to the project. These organizations could include, but are not limited to:

- Nonprofit organizations, such as community or faith-based organizations, that have direct access to the target populations;
- Labor organizations, including but not limited to labor unions and labor-management organizations that represent workers in the health care sector or other high growth and emerging industries;
- Organizations implementing projects funded by the Recovery Act that will create or support jobs in the health care sector or other high growth and emerging industries;
- National, State, and local foundations, which focus on assisting participants served through the project; and
- State and local social service agencies that provide supportive services to participants served through the project.

C. Cost Sharing

Cost sharing or matching funds are not required as a condition for application, but leveraged resources are

strongly encouraged and may affect the applicant's score in section V.A.3 of the evaluation criteria.

D. Other Eligibility Requirements

1. Proposed Activities

The purpose of this SGA is to fund projects providing training, education, and job placement assistance to prepare workers to enter the health care sector and other high growth and emerging industries described in part B of the Background section of this SGA.

i. Characteristics of Training Activities

All projects must lead to employment for program participants, and must incorporate training activities that:

- Address skills and competencies demanded by the industries targeted through this SGA and described in part B of the Background section;
- Support participants' advancement along a defined career pathway, such as an articulated career ladder and/or career lattice, if such a pathway exists in the targeted industry or industries;
- Result in an employer- or industry-recognized certificate or degree during the period of performance. Certificates or degrees can include a license as well as a Registered Apprenticeship certificate or degree (see definition in Section VI.B.2.ii) that indicates a level of mastery and competence in a given field or function. The certificate or degree awarded to participants should be based on the type of training provided through the grant and the requirements of the targeted occupation, and should be selected based on consultations with employer and labor partners, as appropriate;
- Take place at times and locations that are convenient and easily accessible for the targeted populations;
- Integrate occupational training with basic skills training to ensure that participants have the foundational skills necessary to attain and retain employment; and
- Integrate training activities with supportive services to ensure that participants have the necessary support to overcome barriers to participate in training and employment.

Applicants may propose a wide range of activities in implementing projects that meet the requirements outlined above. When designing the proposed activities, DOL encourages applicants to use program models with previous success in serving the target populations, especially those with strong program evaluations showing positive impacts on participants. Promising models include the following:

- Strategies that integrate academic instruction with occupational skills training in a specific career field have shown promising employment and earnings outcomes for low-income young adults. Applicants who are proposing to serve low-income young adults and high school dropouts should consider program models that strongly link opportunities to improve basic literacy and mathematics skills and obtain a high school diploma or GED with work-based learning in the targeted industries.
- Providing on-the-job training with a specific employer who agrees to hire individuals upon successful completion of the training has been an effective way for some programs to place disadvantaged individuals into employment.
- Registered Apprenticeship, with the combination of on-the-job training, related technical instruction, a mentoring component and incremental wage increases, has been highly successful in training a range of participants including at-risk youth, veterans, older workers, and the unemployed.

ii. Allowable Activities

Proposed projects must provide direct training and/or education, placement, and related activities that prepare individuals for employment in health care and other industries. Direct training and/or education costs include, but are not limited to, the following types of costs: faculty/instructors, including salaries and fringe benefits; in-house training staff; support staff such as lab or teaching assistants; classroom space; and books, materials, and supplies used in the training course, including specialized equipment. As with all costs charged to the grant, the costs of equipment must meet the standards in the applicable Federal cost principles, including that the costs are reasonable and necessary to achieve grant outcomes. While grant funds may be used to purchase equipment that are used for training and education activities provided through the proposed project, grantees are encouraged to utilize leveraged resources to support these costs to maximize the use of their grant funds.

Allowable activities under this SGA include:

- Classroom occupational training;
- On-the-job training activities that lead to permanent employment;
- Development and implementation of Registered Apprenticeship and pre-apprenticeship programs;
- Contextualized learning;
- Internship programs;
- Customized training;
- Basic skills training, such as adult basic education, English as a Second Language (ESL), and job readiness training;
- Initial assessment of skill levels, aptitudes, abilities, competencies, and supportive service needs;
- Job search and placement assistance, and, where appropriate, career counseling;
- Case management services;
- Comprehensive retention strategies;
- Supportive services that will allow individuals to participate in the training provided through the grant; and
- Updating curriculum to support direct training provided through the grant. Some grants funded under this SGA may produce tangible products and deliverables, such as updates to existing curriculum and outreach materials. Curriculum development is only appropriate if this curriculum is used in direct training and/or education activities provided through this grant and is necessary to achieve the training and employment outcomes proposed for the grant. (See Section IV.E.4 for information regarding intellectual property rights.)

E. Other Grant Specifications

1. Participants Eligible To Receive Training

This SGA addresses the priorities of the Recovery Act by funding projects that provide education and training, job placement, and supportive services to unemployed workers, dislocated workers, and incumbent workers which include:

i. Unemployed workers (For the purposes of this SGA, ETA defines ''unemployed individual'' as an individual who is without a job and who wants and is available to work);

ii. Dislocated workers (For the purposes of this SGA, this term refers to individuals who were terminated or laid-off or have received a notice of termination or lay-off from employment; or were self-employed but are now unemployed);

iii. Incumbent workers who need training to secure full-time employment, advance in their careers, or retain their current occupations. This includes low-wage workers, workers who need to upgrade their skills to retain employment, and workers who are currently working part-time.

Within these categories, grantees may serve a wide range of individuals, such as individuals on public assistance, high school dropouts, individuals with disabilities, veterans, Indians and Native Americans, and individuals with Limited English Proficiency.

2. Veterans Priority

The Jobs for Veterans Act (Pub. L. 107–288) requires priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. The regulations implementing priority of service for veterans and eligible spouses in Department of Labor job training programs under the Jobs for Veterans Act are found at 20 CFR part 1010. In circumstances where a grant recipient must choose between two equally qualified candidates for training, one of whom is a veteran or eligible spouse, the Jobs for Veterans Act requires that the grant recipient give the veteran priority of service by admitting him or her into the program. To obtain priority of service a veteran must meet the program's eligibility requirements. Grantees must comply with DOL guidance on veterans' priority. Currently, ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the Jobs for Veterans Act and its effect on current employment and training programs. TEGL No. 5–03, along with additional guidance, is available at the ''Jobs for Veterans Priority of Service'' Web site: *http://www.doleta.gov/programs/vets.*

3. Grantee Training

Grantees are required to participate in all ETA training activities related to orientation, financial management and reporting, performance reporting, product dissemination, and other technical assistance training as appropriate during the life of the grant. These trainings may occur via conference call, webinar, and in-person meetings. Applicants should include costs for two staff members to attend two trainings that are each two full days in Washington, DC during the grant's period of performance.

IV. Application and Submission Information

A. How To Obtain an Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

The proposal will consist of three separate and distinct parts: (I) a cost proposal; (II) a technical proposal; and (III) attachments to the technical proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered. Please note that it is the applicant's responsibility to ensure that the funding amount requested is consistent across all parts and sub-parts of the application.

Part I. The Cost Proposal. The Cost Proposal must include the following items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm*). The SF 424 must clearly identify the applicant and must be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the authorized representative of the applicant. Applicants must supply their D–U–N–S® Number on the SF 424. All applicants for Federal grant and funding opportunities are required to have a D–U–N–S® (Data Universal Numbering System) Number. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402, Jun. 27, 2003. The D–U–N–S® Number is a non-indicative, nine-digit number assigned to each business location in the D&B database having a unique, separate, and distinct operation, and is maintained solely by D&B. The D&B D–U–N–S® Number is used by industries and organizations around the world as a global standard for business identification and tracking. If you do not have a D–U–N–S® Number, you can get one for free through the SBS site: *http://smallbusiness.dnb.com/webapp/wcs/stores/servlet/Glossary?fLink=glossary&footerflag=y&storeId=10001&indicator=7.*
- The SF 424A Budget Information Form (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the budget request, explained in detail below.
- *Budget Narrative:* The budget narrative must provide a description of costs associated with each line item on the SF–424A. It should also include a description of leveraged resources provided to support grant activities. In addition, the applicant should address precisely how the administrative costs support the project goals. The entire Federal grant amount requested should be included on both the SF 424 and SF 424A (not just one year). No leveraged resources should be shown on the SF 424 and SF 424A.

Please note that applications that fail to provide an SF 424, SF 424A, a D–U–N–S® Number, and a budget narrative will be non-responsive.

- Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found under the Grants.gov, Tips and Resources From Grantors, Department of Labor section at *http://www07.grants.gov/applicants/tips_resources_from_grantors.jsp#13* (also referred to as Faith Based EEO Survey PDF Form).

Part II. The Technical Proposal. The Technical Proposal demonstrates the applicant's capability to implement the grant project in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in Part V.A of this SGA. The Technical Proposal is limited to 20 double-spaced single-sided pages with 12 point text font and 1 inch margins. Any materials beyond the 20-page limit will not be read. Applicants should number the Technical Proposal beginning with page number 1. Applications that do not include Part II, the Technical Proposal, will be non-responsive.

Part III. Attachments to the Technical Proposal. In addition to the 20-page Technical Proposal, the applicant must submit a letter or letters of commitment signed by all required partners (preferably one letter co-signed by all required partners) that describes the roles and responsibilities of each required partner. Applicants should not send letters of commitment separately to ETA because these letters will be tracked through a different system and will not be attached to the application for review. ETA does not encourage general letters of support submitted by organizations or individuals that are not partners in the proposed project and that do not directly identify the specific commitment or roles of the project partners. The applicant also must provide an Abstract, not to exceed one page, summarizing the proposed project, including applicant name; targeted industry; project title; identification of the community or communities to be served, including whether the community(ies) are located in urban, suburban, or rural areas; and the funding level requested. The abstract must also indicate whether one or more of the counties served by the proposed project appear on the attached list of counties impacted by automotive-related restructuring, which is included

as Attachment I of this SGA. The applicant must indicate the total amount of grant funds that will be used for activities in those impacted counties.

These additional materials (commitment letters and one-page abstract) do not count against the 20-page limit for the Technical Proposal, but may not exceed 13 pages. Any additional materials beyond the 13-page limit will not be read.

Applications may be submitted electronically on Grants.gov or in hard copy by mail or hand delivery. These processes are described in further detail in Section IV.C. Applicants submitting proposals in hardcopy must submit an original signed application (including the SF 424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hardcopy are also required to provide an identical electronic copy of the proposal on compact disc (CD).

C. Submission Process, Date, Times, and Addresses

The closing date for receipt of applications under this announcement is October 5, 2009. Applications must be received at the address below no later than 4 p.m. Eastern Time. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Donna Kelly, Grant Officer, Reference SGA/DFA, PY 09–01, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time.

Applicants may apply online through Grants.gov (*http://www.grants.gov*); however, due to the expected increase in system activity resulting from the American Recovery and Reinvestment Act of 2009, applicants are encouraged to use an alternate method to submit grant applications during this heightened period of demand. While not mandatory, DOL encourages the submission of applications through professional overnight delivery service.

Applications that are submitted through Grants.gov must be successfully submitted at *http://www.grants.gov* no later than 4 p.m. Eastern Time on October 5, 2009, and then subsequently validated by Grants.gov. The submission and validation process is described in more detail below. The process can be complicated and time-consuming. Applicants are strongly advised to initiate the process as soon as possible and to plan for time to resolve technical problems if necessary.

The Department strongly recommends that before the applicant begins to write the proposal, applicants should immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic submission in order to avoid unexpected delays that could result in the rejection of an application. The Department strongly recommends that applicants use the ''Organization Registration Checklist'' at *http://www.grants.gov/assets/Organization_Steps_Complete_Registration.pdf* to ensure the registration process is complete.

Within two business days of application submission, Grants.gov will send the applicant two email messages to provide the status of application progress through the system. The first email, almost immediate, will confirm receipt of the application by Grants.gov. The second email will indicate the application has either been successfully validated or has been rejected due to errors. Only applications that have been successfully submitted and successfully validated will be considered. It is the sole responsibility of the applicant to ensure a timely submission; therefore, sufficient time should be allotted for submission (two business days), and, if applicable, subsequent time to address errors and receive validation upon resubmission (an additional two business days for each ensuing submission). It is important to note that if sufficient time is not allotted and a rejection notice is received after the due date and time, the application will not be considered.

To ensure consideration, the components of the application must be saved as either .doc, .xls or .pdf files. If submitted in any other format, the applicant bears the risk that compatibility or other issues will prevent our ability to consider the application. ETA will attempt to open the document but will not take any additional measures in the event of issues with opening. In such cases, the non-conforming application will not be considered for funding.

Applicants are strongly advised to utilize the plethora of tools and documents, including FAQs, that are available on the ''Applicant Resources'' page at *http://www.grants.gov/applicants/app_help_reso.jsp#faqs.* To receive updated information about critical issues, new tips for users and other time sensitive updates as information is available, applicants may subscribe to ''Grants.gov Updates'' at *http://www.grants.gov/applicants/email_subscription_signup.jsp.*

If applicants encounter a problem with Grants.gov and do not find an answer in any of the other resources, call 1–800–518–4726 to speak to a Customer Support Representative or e-mail ''*support@grants.gov*''.

Late Applications: For applications submitted on Grants.gov, only applications that have been successfully submitted no later than 4:00 p.m. Eastern Time on the closing date and then successfully validated will be considered. Applicants take a significant risk by waiting to the last day to submit via Grants.gov.

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, it was properly addressed, and it was: (a) Sent by U.S. Postal Service mail, postmarked not later than the fifth calendar day before the date specified for receipt of applications (*e.g.,* an application required to be received by the 20th of the month must be postmarked by the 15th of that month); or (b) sent by professional overnight delivery service to the addressee not later than one working day prior to the date specified for receipt of applications. ''Postmarked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

E. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal cost principles or other conditions contained in the grant.

Successful and unsuccessful applicants will not be entitled to reimbursement of pre-award costs.

1. Indirect Costs

As specified in OMB Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. In order to use grant funds for indirect costs incurred the applicant must obtain an Indirect Cost Rate Agreement with its Federal cognizant agency either before or shortly after grant award.

2. Administrative Costs

Under this SGA, an entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be direct or indirect costs, and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. However, they must be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate Agreement from its Federal cognizant agency.

3. Salary and Bonus Limitations

Under Public Law 109–234 and Public Law 111–8, Section 111, none of the funds appropriated in Public Law 111–5 or prior Acts under the heading ''Employment and Training'' that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. These limitations also apply to grants funded under this SGA. The salary and bonus limitation does not apply to vendors providing goods and services as defined in OMB Circular A–133. See Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.*

4. Intellectual Property Rights

The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal purposes: (i) the copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and (ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, grantees must include the following language on all products developed in whole or in part with grant funds:

''This workforce solution was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. The solution was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This solution is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for non-commercial purposes is permissible. All other uses require the prior authorization of the copyright owner.''

F. Use of Funds for Supportive Services

Supportive services for adults and dislocated workers are defined at WIA sections 101(46) and 134(e)(2) and (3). They include services such as transportation, child care, dependent care, and housing that are necessary to enable an individual to participate in activities funded through this grant. Further, supportive services can include needs-related payments (NRPs) that are necessary to enable individuals to participate in training activities funded through this grant. Accordingly, grantees may only use grant funds to provide supportive services to individuals who are participating in activities provided through the grant (or in the case of NRPs, participating in training), who are unable to obtain such services through other programs, and when such services are necessary to enable individuals to participate in activities. Grantees should ensure that their use of grant funds on supportive services is consistent with their established written policy regarding the provision of supportive services. Grantees may use no more than 10% of their grant funds on these services. However, to support the employment and training needs of the targeted populations, ETA encourages grantees to leverage other sources of funding for supportive services, including WIA Adult formula funds provided under the Recovery Act. Further, ETA encourages grantees to leverage earnings from part-time and full-time employment and unemployment compensation that will enable individuals to participate in training, in addition to utilizing grant funds for needs-related payments.

G. Other Submission Requirements

Withdrawal of Applications: Applications may be withdrawn by written notice to the Grant Officer at any time before an award is made.

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate the grant proposals. These criteria and point values are:

Criterion	Points
1. Statement of Need	15
2. Project Management and Organizational Capacity	15
3. Strategy and Project Work Plan	50
4. Outcomes and Deliverables	15
5. Suitability for Evaluation	5

1. Statement of Need (15 points)

An applicant must fully demonstrate a clear and specific need for the Federal investment in the proposed activities. An applicant must submit data and provide evidence for proposed projects in the local areas or communities where participants will be trained and

employed. Points for this section will be awarded based on a comprehensive demonstration of each of the following factors:

i. Overview of Current Economy and Workforce (15 points)

The applicant clearly and fully demonstrates the need for training and employment in the local area by describing the overall economy and workforce needs. Given the rapidly changing economic conditions that many States and regions are currently facing, applicants should use the most current and relevant sources of labor market data available. Points for this subsection will be awarded based on the following factors:

- The applicant fully describes the specific community(ies) that the project will serve, and demonstrates the workforce needs in the community, including the unemployment rate(s), poverty rate(s), the needs of diverse populations within the community, a discussion of any significant layoffs or industry restructuring in specific industries, as well as estimates of the number of individuals in the community who are: (a) unemployed workers; (b) dislocated workers; and (c) incumbent workers including low-wage workers.
- The applicant provides strong evidence of job seeker need for training by identifying one or more of the populations listed above (unemployed workers; dislocated workers; and/or incumbent workers) that the project will target, providing a general description of the current level of skills and educational attainment of those populations, and identifying the specific training needs of those populations.
- The applicant fully identifies other barriers to employment faced by the targeted populations, such as lack of child care or access to transportation.

Applicants may draw from a variety of resources for supporting data, which include but are not limited to: traditional labor market information, such as projections; industry data; data from trade associations or direct information from the regional industry; and information on the regional economy and other transactional data, such as job vacancies, that are available.

2. Project Management and Organizational Capacity (15 points)

An applicant must fully describe the capacity of the applicant and its required partners to effectively staff the proposed initiative. The application must also fully describe the applicant's fiscal, administrative, and performance management capacity to implement the key components of this project, and the track record of the applicant and its required partners in implementing projects of similar focus, size, and scope.

Scoring under this criterion will be based on the extent to which applicants provide evidence of the following:

i. Staff Capacity (5 points)

An applicant must provide strong evidence that the applicant and its required partners have the staff capacity to implement the proposed initiative. Discussion should include:

- The proposed staffing pattern for the project, including program management and administrative staff and program staff, which demonstrates that the role(s) and time commitment of the proposed staff are sufficient to ensure proper direction, management, implementation, and timely completion of each project.
- The applicant must demonstrate that the qualifications and level of experience of the proposed project manager are sufficient to ensure proper management of the project, where such a project manager has been identified. Where no project manager is identified, applicants should discuss the minimum qualifications and level of experience that will be required of the position.

ii. Fiscal, Administrative, and Performance Management Capacity (5 points)

The application must provide strong evidence that the applicant and its required partners have the fiscal, administrative, and performance management capacity to effectively administer this grant. Discussion should include:

- A full description of the applicant's capacity, including its systems, processes, and administrative controls that will enable it to comply with Federal rules and regulations related to the grant's fiscal and administrative requirements.
- A full description of the applicant's capacity, including its systems and processes that will support the grant's performance management requirements through effective tracking of performance outcomes. Applicants must include an explanation of the applicant's processes to collect and manage data in a way that allows for accurate and timely reporting of performance outcomes. Applicants may cite relationships with the public workforce system, as appropriate, to assist with performance reporting, and should describe access to specific data management software and/or resources for performance reporting.

iii. Applicant's Experience (5 points)

The applicant must demonstrate its experience leading or participating significantly in a comprehensive partnership, and the demonstrated experience of the applicant and its partners in implementing and operating training, education, and job placement initiatives of similar focus, size and scope. The discussion must include:

- Specific examples of the applicant's experience in leading or participating significantly in a partnership that included a wide range of stakeholders, including a description of the programmatic goals of the project, and a demonstration of the results achieved by that project.
- Specific examples of the applicant's track record administering Federal, State, and/or other grants, including the programmatic goals and results from these projects; and
- A description of the experience of the applicant and its required partners in Federal, State, and/or other projects providing education, training, and placement services to the specific populations noted in Section III.D. (unemployed workers; dislocated workers; incumbent workers including low-wage workers), including the programmatic goals and results of the projects.

3. Strategy and Project Work Plan (50 points)

The applicant must provide a complete, very clear explanation of its proposed strategy and its implementation plans. The applicant must describe the proposed workforce development strategy in full; explain how the proposed training addresses the applicant's statement of need; and demonstrate how the proposed project will expeditiously and effectively deliver training. ETA is interested in applicants describing any evidence-based research that they considered in designing the strategy. The applicant must present a comprehensive work plan for the project, following the format provided later in this section. Points for this criterion will be awarded for the following factors:

i. Addressing Conditions Described in the Statement of Need, and Targeted Industries and Occupations (10 points)

- The applicant summarizes the proposed strategy.
- The applicant explains how the proposed project comprehensively addresses the needs and challenges of the targeted populations laid out in the Statement of Need.
- The applicant provides a complete description of the targeted industries

and occupations within those industries that the proposed project will focus on, including: the specific industry(ies) targeted by the project, and an explanation of how the targeted industry(ies) meet the requirements identified in part B of the Background section of this SGA; the specific occupation in the targeted industries for which participants will be trained, including the work performed by that occupation and its major tasks; and the specific knowledge, skills, and/or abilities required by the occupation.

• The applicant fully describes the employment needs of the targeted industries and occupations in the designated community, including: total current and projected employment in the industry; total current and projected employment in the targeted occupations; and the current hiring needs of specific employers and how job seekers served through the project will be placed in those jobs.

ii. Roles and Level of Commitment of Project Partners (15 points)

Scoring on this section will be based on the extent to which the applicant fully demonstrates the breadth and depth of their partners' commitment to the proposed project, by addressing the following factors:

• The applicant fully describes the specific roles of each of the project partners in the community, including training, supportive services, expertise, and/or other activities that partners will contribute to the project.

• The applicant demonstrates a strong partnership by providing a letter or letters of commitment signed by all required partners (preferably one letter co-signed by all required partners) that describes the roles, responsibilities, and resources committed by each partner. (See Section IV.B for instructions on submitting letters of commitment).

• The applicant clearly and fully describes any funds and other resources that will be leveraged to support grant activities and how these funds and other resources will be used to contribute to the proposed outcomes for the project, including any leveraged resources related to the provision of supportive services for program participants. This includes funds and other resources leveraged from businesses, labor organizations, education and training providers, and/or Federal, state, and local government programs. Applicants will be scored based on the extent to which they fully demonstrate the resources provided, including the type(s) of leveraged resources provided, the strength of commitment to provide these resources (such as in commitment letters), the breadth and depth of the resources provided, and how well these resources support the proposed grant activities.

iii. Proposed Recruitment, Training, Placement, and Retention Strategies (10 points)

• Recruitment: The applicant must provide a comprehensive outreach and recruitment strategy that is inclusive of diverse populations as defined in the statement of need, and that defines a clear process for finding and referring workers to the training programs. The applicant must clearly identify the populations that will be targeted by the project, and explain how the proposed strategy will enable the project to effectively recruit those populations.

• Training: DOL encourages applicants to base their training strategies on program models that have shown promising outcomes for serving the populations targeted through this SGA. The applicant must provide a detailed explanation of the proposed training activities that describes how the project will comprehensively address the training needs of the targeted populations, including a discussion of how the design of the training activities will account for the current skill and education level, age, language barriers, or level of work experience of the targeted populations. The applicant must also describe how the project will address barriers to employment by combining training services with supportive services, such as child care or transportation, as appropriate for each targeted population. The applicant must demonstrate that the project will place participants on a career pathway; that training will focus on the specific industries and occupations it has proposed to target and focuses on skills and competencies demanded by the selected industries and occupations; that the project will integrate basic skills training where appropriate; and that the training will lead to an appropriate employer- or industry-recognized certificate or degree (which can include a license, as well as a Registered Apprenticeship certificate or degree) and to employment, and take place at times and locations that are convenient and easily accessible for the target populations.

• Placement: The applicant must provide a clear strategy for placing individuals into employment. The applicant must describe the methods for engaging employers, identifying specific job needs, and referring participants to employers. Wherever possible, the applicant should identify specific employers that indicate plans to hire project participants that complete training. This strategy includes moving incumbent workers along career pathways.

• Retention: The applicant must provide a clear strategy for job retention. This should include strategies for engaging employers, as well as for identifying the barriers to retention that participants face after placement and for providing them with supportive services to address these barriers.

iv. Project Work Plan (15 points)

An applicant must provide a comprehensive project work plan. Factors considered in evaluating the project work plan will include: (1) The presentation of a coherent plan that demonstrates the applicant's complete understanding of all the activities, responsibilities, and costs required to implement each phase of the project and achieve projected outcomes; (2) the demonstrated feasibility and reasonableness of the timeline for accomplishing all necessary implementation activities, including the ability to expeditiously begin training; and (3) the extent to which the budget aligns with the proposed work plan and is justified with respect to the adequacy and reasonableness of resources requested. Applicants must present this work plan in a table that includes the following categories:

• Project Phase: Lay out the timeline in five phases—Startup, Recruitment, Training, Placement, and Retention.

• Activities: Identify the major activities required to implement each phase of the project. For each activity, include the following information: (a) Start Date; (b) End Date; (c) Project partner(s) that will be primarily responsible for performing each activity; (d) Key tasks associated with each activity; (e) At key project milestones, list the target dates and associated outcomes projected for recruitment, training, placement, and retention activities; and (f) As accurately as possible, list the sub-total budget dollar amount associated with each activity.

4. Outcomes and Deliverables (15 points)

An applicant must demonstrate a results-oriented approach to managing and operating its project by providing projections for all applicable outcome categories relevant to measuring the success or impact of the project, describing the products and deliverables that will be produced as a result of the grant activities, and fully demonstrating the appropriateness and feasibility of achieving these results. The applicant must include projected outcomes,

which will be used as goals for the grant. The applicant must comprehensively address each of the areas outlined below.

i. Projected Performance Outcomes (7 points)

The applicant must provide projections and track outcomes for each of the following outcome categories for all participants served with grant funds:

- Total participants served;
- Total number of participants beginning education/training activities;
- Total number of participants completing education/training activities;
- Total number of participants that complete education/training activities that receive a degree/certificate;
- Total number of participants that complete education/training activities that are placed into unsubsidized employment;
- Total number of participants that complete education/training activities that are placed into training-related unsubsidized employment; and
- Total number of participants placed in unsubsidized employment who retain an employed status in the first and second quarters following initial placement.

An applicant will need to be prepared to collect participant-level data on individuals who receive training and other services provided through the grant. These data should be the basis for reporting against the outcomes listed above, and may be required for reporting on other employment-related outcomes in the future. ETA will provide appropriate technical assistance to the grantees in collecting these data, including the development of a participant tracking system for the grantees. In some cases, the data requested below may require appropriate partnerships with state and local workforce investment system entities.

An applicant must be prepared to collect and report participant-level data from the following categories:

- Demographic and socioeconomic characteristics
- Employment history
- Services provided
- Outcomes achieved

An applicant must describe their capacity to collect both participant-level data and aggregate outcomes.

ii. Appropriateness and Feasibility, Degrees or Certificates Resulting From Training, and Deliverables (8 points)

- The applicant must fully demonstrate the appropriateness and feasibility of its projections of the project outcomes by addressing three factors: (1) the extent to which the expected project outcomes are realistic and consistent with the objectives of the project and the needs of the community; (2) the ability of the applicant to achieve the stated outcomes and report results within the timeframe of the grant; and (3) the appropriateness of the outcomes with respect to the requested level of funding.
- Project activities must lead to an employer- or industry-recognized certificate or degree (which can include a license, as well as a Registered Apprenticeship certificate or degree), and must identify the degree or certificate that participants will earn as a result of the proposed training, and the employer-, industry-, or State-defined standards associated with the degree or certificate. If the degree or certificate targeted by the training project is performance-based, applicants should either: (a) Demonstrate employer engagement in the curriculum development process, or (b) demonstrate that the degree or certificate will translate into concrete job opportunities with an employer.
- If applicable, the applicant must provide a comprehensive list of expected deliverables consistent with the project work plan that includes a brief description of the deliverable (such as updated curriculum and outreach materials), the anticipated completion date, and an estimated timeframe and method for electronic delivery to ETA. Electronic delivery may include email for smaller documents, DVDs or other electronic media for transmission of larger files.

5. Suitability for Evaluation (5 points)

Under this Solicitation, DOL seeks to support programs that will provide training that improves participants' employment outcomes. The Department is committed to evaluating program results to assess whether programs meet this goal and which models are most effective, providing a basis for future program improvements and funding decisions. DOL intends to select some portion of grantees to participate in a rigorous evaluation. This section asks for evidence that applicants will be able to participate productively in an evaluation. To receive points under this section, applicants must describe their plans for meeting the following criteria. Specifically, the project must:

- Explain a recruitment plan that could yield a large number of qualified applicants for the program, and potentially more applicants than the number of participant slots available;
- Be able to collect participant-level information on individuals who apply to participate in the program;
- Have project retention strategies to minimize client attrition and help researchers track those who leave the program before completion;
- Work collaboratively with an outside evaluator selected by DOL;
- Be willing to work with academics who are independent researchers qualified to conduct rigorous research; and
- Provide additional information about why funding this proposal will enhance knowledge about effective programs in a way that has the potential to benefit individuals and communities not directly served by the program.

B. Review and Selection Process

Applications for grants under this solicitation will be accepted after the publication of this announcement and until the closing date. A technical review panel will carefully evaluate applications against the selection criteria. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 100 points may be awarded to an application, depending on the quality of the responses to the required information described in Section V.A. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural, and geographic balance; representation among health care and other high growth and emerging industries targeted through this SGA; representation among communities impacted by automotive industry restructuring; the availability of funds; and which proposals are most advantageous to the government. The panel results are advisory in nature and not binding on the Grant Officer. The Grant Officer may consider any information that comes to his/her attention. The government may elect to award the grant(s) with or without discussions with the applicant. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant including electronic signature via E-Authentication on *http://www.grants.gov.*

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA Homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution and non-

selected applicants will be notified by mail. Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, ETA may enter into negotiations about such items as program components, staffing and funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions:

i. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

ii. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

iii. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).

iv. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements).

v. All entities must comply with 29 CFR parts 93 (New Restrictions on Lobbying) and 98 (Governmentwide Debarment and Suspension), and, where applicable, 29 CFR parts 96 and 99 (Audit Requirements).

vi. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

vii. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

viii. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

ix. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

x. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

xi. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

The following administrative standards and provisions may be applicable:

i. The American Recovery and Reinvestment Act of 2009, Public Law No. 111–5, 123 Stat. 115, Division A, Title VIII (February 17, 2009).

ii. The Workforce Investment Act of 1998, Public Law No. 105–220, 112 Stat. 939 (codified as amended at 29 U.S.C. 2801 *et seq.*) and 20 CFR part 667 (General Fiscal and Administrative Rules).

iii. 29 CFR part 29 and 30—Apprenticeship and Equal Employment Opportunity in Apprenticeship and Training; and

iv. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998. The Department notes that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. sec. 2000bb, applies to all Federal law and its implementation. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive Federal financial assistance under Title I of the Workforce Investment Act and maintain that hiring practice even though Section 188 of the Workforce Investment Act contains a general ban on religious discrimination in employment. If you are awarded a grant, you will be provided with information on how to request such an exemption.

vi. Under WIA Section 181(a)(4), health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in training and other activities. Applicants that are awarded grants through this SGA are reminded that these health and safety standards apply to participants in these grants.

In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Except as specifically provided in this SGA, DOL's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

2. Special Program Requirements

i. Evaluation

To measure the impact of grants funded under this SGA, ETA intends to fund one or more independent evaluations, which could include a random assignment evaluation. By accepting funding, grantees must agree to participate in such an evaluation, should their site(s) be selected to participate. Grantees must agree to make records on participants, employers, and funding available and to provide access to program personnel and participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

ii. Definition of Certificates

A certificate is awarded in recognition of an individual's attainment of measurable technical or occupational skills necessary to gain employment or advance within an occupation. These technical or occupational skills are based on standards developed or endorsed by employers. Certificates awarded by workforce investment boards are not included in this definition. Work readiness certificates are also not included in this definition. A certificate is awarded in recognition of an individual's attainment of technical or occupational skills by:

- A state educational agency or a state agency responsible for administering vocational and technical education within a state;
- An institution of higher education described in Section 102 of the Higher Education Act (20 USC 1002) that is qualified to participate in the student financial assistance programs authorized by Title IV of that Act. This includes community colleges, proprietary schools, and all other institutions of higher education that are eligible to participate in Federal student financial aid programs;
- A professional, industry, or employer organization (*e.g.,* National

Institute for Automotive Service Excellence certification, National Institute for Metalworking Skills, Inc., Machining Level I credential) or a product manufacturer or developer (*e.g.,* Microsoft Certified Database Administrator, Certified Novell Engineer, Sun Certified Java Programmer) using a valid and reliable assessment of an individual's knowledge, skills, and abilities;

- A Registered Apprenticeship program;
- A public regulatory agency, upon an individual's fulfillment of educational, work experience, or skill requirements that are legally necessary for an individual to use an occupational or professional title or to practice an occupation or profession (*e.g.,* FAA aviation mechanic certification, state certified asbestos inspector);
- A program that has been approved by the Department of Veterans Affairs to offer education benefits to veterans and other eligible persons;
- Job Corps centers that issue certificates; or
- Institutions of higher education which are formally controlled, or have been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes.

iii. Definitions of Populations and Other Key Terms

- Veterans: For the purposes of this solicitation, ETA follows the WIA definition of veteran under 29 U.S.C. § 2801(49)(A), which defines the term ''veteran'' as ''an individual who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable.'' Active military service includes full-time duty (other than full-time duty for training purposes) in Reserve components ordered to active duty, or in National Guard units called to Federal Service by the President.

3. American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) Provisions

Prospective applicants are advised that, if they receive an award, they must comply with all requirements of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111–5]. Applicants are advised to review the Act and implementing OMB guidance in the development of their proposals. Requirements include, but are not limited to:

- Adherence to all grant clauses and conditions as they relate to Recovery Act activity.
- Prohibition on expenditure of funds for activities at any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.
- Compliance with the requirements to obtain a D–U–N–S® Number and register with the Central Contractor Registry (CCR). ETA will issue additional guidance related to this requirement shortly.
- Submission of required reports in accordance with Section 1512 of the Recovery Act. These reports will be due quarterly within 10 days of the end of the reporting period and are in addition to the ETA required reports addressed in Section VI.C of this SGA. ETA will issue additional guidance related to these reports and their submission requirements shortly.

Implementing OMB guidance may be found at *http://www.recovery.gov.*

C. Reporting

Quarterly financial reports, quarterly progress reports, and MIS data will be submitted by the grantee electronically. The grantee is required to provide the reports and documents listed below:

1. Quarterly Financial Reports

A Quarterly Financial Status Report (ETA 9130) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use DOL's On-Line Electronic Reporting System and information and instructions will be provided to grantees.

2. Quarterly Performance Reports

The grantee must submit a quarterly progress report within 45 days after the end of each calendar year quarter. In order to submit these quarterly reports, the grantee will be expected to track participant-level data on the individuals who are involved in training and other services provided through the grant and report on participant status in a variety of fields and outcome categories, as well as provide narrative information on the status of the grant. The last quarterly progress report that grantees submit will serve as the grant's Final Performance Report. This report should provide both quarterly and cumulative information on the grant's activities. It must summarize project activities, employment outcomes and other deliverables, and related results of the project, and should thoroughly document the training or labor market information approaches utilized by the grantee. DOL will provide grantees with formal guidance about the data and other information that is required to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements.

3. Record Retention

Applicants must be prepared to follow Federal guidelines on record retention, which require grantees to maintain all records pertaining to grant activities for a period of not less than three years from the time of final grant close-out.

VII. Agency Contacts

For further information regarding this SGA, please contact Ariam Ferro, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3968 (This is not a toll-free number). Applicants should e-mail all technical questions to *Ferro.Ariam@dol.gov* and must specifically reference SGA/DFA PY 09–01, and along with question(s), include a contact name, fax and phone number. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/grants* and at *http://www.grants.gov.*

VIII. Additional Resources of Interest to Applicants

A. Other Web-Based Resources

DOL maintains a number of web-based resources that may be of assistance to applicants. For example, America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One Stop Career Centers.

B. Industry Competency Models

ETA supports an Industry Competency Model Initiative to promote an understanding of the skill sets and competencies that are essential to an educated and skilled workforce. A competency model is a collection of competencies that, taken together, define successful performance in a particular work setting. Competency models serve as a starting point for the design and implementation of workforce and talent development programs. To learn about the industry-validated models visit the Competency Model Clearinghouse (CMC) at *http://www.careeronestop.org/CompetencyModel.* The CMC site also provides tools to build or customize industry models, as well as tools to build career ladders and career lattices.

C. Promising Training Approaches

ETA encourages applicants to research promising training approaches in order to inform their proposals. The following list of Web sites provides a starting place for this research, but by no means should be considered a complete list:

- ETA's home site (*http://www.doleta.gov*) and the ETA Research Publication Database (*http://wdr.doleta.gov/research/keyword.cfm*)
- ETA's knowledge sharing site (*http://www.workforce3one.org*), including the ''workforce solutions'' section that contains over 6,000 additional resources applicants may find valuable in developing workforce strategies and solutions
- The National Governors Association Center for Best Practices (*http://www.nga.org*)
- The National Association of State Workforce Agencies (*http://www.workforceatm.org*)
- The National Association of Workforce Boards (*http://www.nawb.org*)

IX. Other Information

OMB Information Collection No. 1225–0086

Expires September 30, 2009

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including 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 the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Department of Labor, in the Office of Management and Budget, Room 10235, Washington, DC 20503. PLEASE DO NOT RETURN THE COMPLETED APPLICATION TO THE OMB. SEND IT TO THE SPONSORING AGENCY AS SPECIFIED IN THIS SOLICITATION.

This information is being collected for the purpose of awarding a grant. The information collected through this SGA will be used by DOL to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

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

Donna Kelly,

Grant Officer, Employment and Training Administration.

ATTACHMENT I—COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING

FIPS	County name	State
1013	Butler	AL.
1021	Chilton	AL.
1083	Limestone	AL.
1085	Lowndes	AL.
1089	Madison	AL.
1095	Marshall	AL.
1101	Montgomery	AL.
1121	Talladega	AL.
1125	Tuscaloosa	AL.
5023	Cleburne	AR.
5041	Desha	AR.
5055	Greene	AR.
5083	Logan	AR.
6001	Alameda	CA.
6037	Los Angeles	CA.
10003	New Castle	DE.
13089	DeKalb	GA.
13121	Fulton	GA.
13139	Hall	GA.
13143	Haralson	GA.
13167	Johnson	GA.
13285	Troup	GA.
19029	Cass	IA.
19037	Chickasaw	IA.
19071	Fremont	IA.
19089	Howard	IA.
19095	Iowa	IA.
19115	Louisa	IA.
19149	Plymouth	IA.
19157	Poweshiek	IA.
19175	Union	IA.
19197	Wright	IA.
17007	Boone	IL.
17025	Clay	IL.
17031	Cook	IL.
17047	Edwards	IL.
17067	Hancock	IL.
17121	Marion	IL.
17113	McLean	IL.
17155	Putnam	IL.
17187	Warren	IL.
17189	Washington	IL.
17191	Wayne	IL.
18001	Adams	IN.
18003	Allen	IN.
18005	Bartholomew	IN.
18009	Blackford	IN.
18015	Carroll	IN.
18017	Cass	IN.
18025	Crawford	IN.
18033	De Kalb	IN.
18031	Decatur	IN.
18035	Delaware	IN.
18037	Dubois	IN.
18039	Elkhart	IN.
18041	Fayette	IN.
18045	Fountain	IN.
18047	Franklin	IN.
18051	Gibson	IN.
18053	Grant	IN.
18059	Hancock	IN.
18061	Harrison	IN.
18065	Henry	IN.

ATTACHMENT I—COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING—Continued

FIPS	County name	State
18067	Howard	IN.
18071	Jackson	IN.
18075	Jay	IN.
18077	Jefferson	IN.
18081	Johnson	IN.
18087	LaGrange	IN.
18093	Lawrence	IN.
18097	Marion	IN.
18103	Miami	IN.
18107	Montgomery	IN.
18113	Noble	IN.
18123	Perry	IN.
18133	Putnam	IN.
18135	Randolph	IN.
18143	Scott	IN.
18147	Spencer	IN.
18141	St. Joseph	IN.
18149	Starke	IN.
18151	Steuben	IN.
18153	Sullivan	IN.
18157	Tippecanoe	IN.
18159	Tipton	IN.
18175	Washington	IN.
18179	Wells	IN.
18183	Whitley	IN.
20001	Allen	KS.
20209	Wyandotte	KS.
21003	Allen	KY.
21009	Barren	KY.
21017	Bourbon	KY.
21023	Bracken	KY.
21031	Butler	KY.
21033	Caldwell	KY.
21041	Carroll	KY.
21043	Carter	KY.
21055	Crittenden	KY.
21057	Cumberland	KY.
21069	Fleming	KY.
21073	Franklin	KY.
21075	Fulton	KY.
21077	Gallatin	KY.
21081	Grant	KY.
21093	Hardin	KY.
21099	Hart	KY.
21101	Henderson	KY.
21103	Henry	KY.
21107	Hopkins	KY.
21111	Jefferson	KY.
21113	Jessamine	KY.
21121	Knox	KY.
21123	Larue	KY.
21137	Lincoln	KY.
21151	Madison	KY.
21155	Marion	KY.
21167	Mercer	KY.
21169	Metcalfe	KY.
21173	Montgomery	KY.
21179	Nelson	KY.
21183	Ohio	KY.
21191	Pendleton	KY.
21199	Pulaski	KY.
21207	Russell	KY.
21209	Scott	KY.
21211	Shelby	KY.
21213	Simpson	KY.
21221	Trigg	KY.
21227	Warren	KY.
21229	Washington	KY.
22017	Caddo	LA.
24510	Baltimore (city)	MD.

ATTACHMENT I—COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING—Continued

FIPS	County name	State
24043	Washington	MD.
26009	Antrim	MI.
26017	Bay	MI.
26025	Calhoun	MI.
26045	Eaton	MI.
26049	Genesee	MI.
26059	Hillsdale	MI.
26063	Huron	MI.
26065	Ingham	MI.
26067	Ionia	MI.
26069	Iosco	MI.
26075	Jackson	MI.
26079	Kalkaska	MI.
26081	Kent	MI.
26087	Lapeer	MI.
26091	Lenawee	MI.
26093	Livingston	MI.
26099	Macomb	MI.
26107	Mecosta	MI.
26111	Midland	MI.
26113	Missaukee	MI.
26115	Monroe	MI.
26125	Oakland	MI.
26127	Oceana	MI.
26133	Osceola	MI.
26135	Oscoda	MI.
26139	Ottawa	MI.
26143	Roscommon	MI.
26145	Saginaw	MI.
26147	St. Clair	MI.
26149	St. Joseph	MI.
26157	Tuscola	MI.
26159	Van Buren	MI.
26161	Washtenaw	MI.
26163	Wayne	MI.
26165	Wexford	MI.
27029	Clearwater	MN.
27123	Ramsey	MN.
29047	Clay	MO.
29061	Daviess	MO.
29079	Grundy	MO.
29105	Laclede	MO.
29113	Lincoln	MO.
29147	Nodaway	MO.
29175	Randolph	MO.
29183	St. Charles	MO.
29189	St. Louis	MO.
29229	Wright	MO.
28009	Benton	MS.
28011	Bolivar	MS.
28051	Holmes	MS.
28089	Madison	MS.
28119	Quitman	MS.
28129	Smith	MS.
28145	Union	MS.
28161	Yalobusha	MS.
37063	Durham	NC.
37071	Gaston	NC.
37089	Henderson	NC.
37145	Person	NC.
37165	Scotland	NC.
38051	McIntosh	ND.
31019	Buffalo	NE.
31047	Dawson	NE.
31051	Dixon	NE.
31141	Platte	NE.
31159	Seward	NE.
34023	Middlesex	NJ.
34039	Union	NJ.
36029	Erie	NY.

ATTACHMENT I—COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING—Continued

FIPS	County name	State
36063	Niagara	NY.
36067	Onondaga	NY.
36089	St. Lawrence	NY.
39001	Adams	OH.
39003	Allen	OH.
39011	Auglaize	OH.
39019	Carroll	OH.
39021	Champaign	OH.
39025	Clermont	OH.
39027	Clinton	OH.
39033	Crawford	OH.
39035	Cuyahoga	OH.
39039	Defiance	OH.
39043	Erie	OH.
39051	Fulton	OH.
39061	Hamilton	OH.
39063	Hancock	OH.
39065	Hardin	OH.
39069	Henry	OH.
39071	Highland	OH.
39077	Huron	OH.
39079	Jackson	OH.
39083	Knox	OH.
39091	Logan	OH.
39093	Lorain	OH.
39095	Lucas	OH.
39097	Madison	OH.
39113	Montgomery	OH.
39117	Morrow	OH.
39121	Noble	OH.
39125	Paulding	OH.
39131	Pike	OH.
39135	Preble	OH.
39137	Putnam	OH.
39139	Richland	OH.
39141	Ross	OH.
39143	Sandusky	OH.
39147	Seneca	OH.
39149	Shelby	OH.
39153	Summit	OH.
39155	Trumbull	OH.
39159	Union	OH.
39161	Van Wert	OH.
39169	Wayne	OH.
39171	Williams	OH.
39173	Wood	OH.
39175	Wyandot	OH.
40095	Marshall	OK.
40109	Oklahoma	OK.
42003	Allegheny	PA.
42117	Tioga	PA.
45007	Anderson	SC.
45019	Charleston	SC.
45021	Cherokee	SC.
45035	Dorchester	SC.
45067	Marion	SC.
45083	Spartanburg	SC.
47001	Anderson	TN.
47003	Bedford	TN.
47007	Bledsoe	TN.
47009	Blount	TN.
47015	Cannon	TN.
47031	Coffee	TN.
47041	DeKalb	TN.
47045	Dyer	TN.
47051	Franklin	TN.
47053	Gibson	TN.
47055	Giles	TN.
47061	Grundy	TN.
47063	Hamblen	TN.

ATTACHMENT I—COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING—Continued

FIPS	County name	State
47065	Hamilton	TN.
47069	Hardeman	TN.
47073	Hawkins	TN.
47077	Henderson	TN.
47079	Henry	TN.
47087	Jackson	TN.
47097	Lauderdale	TN.
47099	Lawrence	TN.
47105	Loudon	TN.
47113	Madison	TN.
47117	Marshall	TN.
47119	Maury	TN.
47107	McMinn	TN.
47109	McNairy	TN.
47121	Meigs	TN.
47123	Monroe	TN.
47131	Obion	TN.
47133	Overton	TN.
47135	Perry	TN.
47141	Putnam	TN.
47143	Rhea	TN.
47147	Robertson	TN.
47149	Rutherford	TN.
47151	Scott	TN.
47159	Smith	TN.
47177	Warren	TN.
47185	White	TN.
48029	Bexar	TX.
48439	Tarrant	TX.
49003	Box Elder	UT.
51023	Botetourt	VA.
51710	Norfolk (city)	VA.
51155	Pulaski	VA.
51173	Smyth	VA.
51177	Spotsylvania	VA.
55059	Kenosha	WI.
55075	Marinette	WI.
55105	Rock	WI.
54079	Putnam	WV.

[FR Doc. E9–17416 Filed 7–21–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Renewal of the Native American Employment and Training Council (NAETC) Charter

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Renewal of the Native American Employment and Training Council (NAETC) Charter.

SUMMARY: Notice is hereby given of the renewal of the Workforce Investment Act (WIA), Section 166 Indian and Native American program Charter that is necessary and in the public interest. Accordingly, the U.S. Department of Labor (DOL), the Employment and Training Administration has renewed the NAETC Charter for two years and

has made changes to the terms of members.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to WIA Section 166(4)(C), the NAETC advises the Secretary on all aspects of the operation and administration of the Native American programs authorized under Section 166 of WIA. In addition, the Council advises the Secretary on matters that promote the employment and training needs of Indian and Native Americans, as well as enhance the quality of life in accordance with the Indian Self-Determination Act and Education Assistance Act. The Council shall also provide guidance to the Secretary on ways for Indian, Alaska Natives, and Native Hawaiians to successfully access and obtain DOL discretionary funding and participate in special initiatives.

The charter is required to be renewed every two years; the current charter expired on June 26, 2009. The NAETC recommendations and accomplishments have and continue to assist ETA and the Secretary to transform and expand the apprenticeship model. The current charter is being renewed with changes to the terms of members.

Summary of Revisions: The charter is amended to state that ''appointments shall remain effective until a replacement is designated by the Secretary in writing.'' However, all council members shall serve at the pleasure of the Secretary and members may be appointed, reappointed, and/or replaced, and their terms may be extended, changed, or terminated at the Secretary discretion.

FOR FURTHER INFORMATION CONTACT: Mrs. Evangeline M. Campbell, Designated Federal Officer, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3737, (this is not a toll-free number).

Signed at Washington, DC this 13th day of July 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–17411 Filed 7–21–09; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment & Training Administration

[SGA/DFA–PY 08–19]

Solicitation for Grant Applications (SGA); Amendment One; Pathways Out of Poverty

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA–PY 08–19.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on June 24, 2009, announcing the availability of funds and solicitation for grant applications (SGA) for Pathways Out of Poverty to be awarded through a competitive process. This amendment to the SGA clarifies items related to: (1) The grant officer to whom mailed applications should be addressed; (2) supplementary information in Section B ''Green Industries and Occupations''; (3) eligible applicants and required partnerships (Section III.A); (4) local entities (Section III.A.2); and (5) participants eligible to receive training (Section III.D.1). The document is hereby amended.

1. **ADDRESSES** section (page 30138) is revised by replacing the language designated below as ''old text'' with the language designated as ''new text'' as follows:

a. Old Text—''**ADDRESSES:** Mailed applications must be addressed to the U.S. Department of Labor, Employment & Training Administration, Division of Federal Assistance, Attention: Melissa Abdullah, Grants Officer, Reference SGA/DFA PY 08–19, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210.''

b. New Text—''**ADDRESSES:** Mailed applications must be addressed to the U.S. Department of Labor, Employment & Training Administration, Division of Federal Assistance, Attention: Donna Kelly, Grant Officer, Reference SGA/DFA PY 08–19, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210.''

2. **SUPPLEMENTARY INFORMATION** *Section B ''Green Industries and Occupations''* (page 30139) is revised to provide further information on the industries on which applicants may focus by adding the language designated below as ''new text'' to the existing language in that section:

a. New Text: ''We will also evaluate applications for projects that include emerging green occupations from industries that have not been discussed in this section.''

3. *Section III.A, ''Eligible Applicants and Required Partnerships''* (page 30140) is revised to confirm that the applicant in the proposed project must be clearly designated by replacing the language designated below as ''old text'' with the language designated as ''new text'' as follows at the end of the first paragraph:

a. Old Text—''The applicant categories for this SGA, along with the required partnerships for each, are defined below.''

b. New Text—''The applicant categories for this SGA, along with the required partnerships for each, are defined below. While the SGA indicates required and suggested partners, the proposal must designate a lead applicant.''

4. *Section III.A.2, ''Local Entities''* (page 30141) is revised to confirm that Tribal Governments may be eligible applicants within the local entity category, and provide further information on the definition of non-profit entities. In the SGA, the language designated below as ''old text'' is replaced with the language designated as ''new text,'' as follows:

a. Old Text—''For the purposes of this SGA, applicants qualify as local entities if they are public organizations (such as community colleges or workforce investment boards) or private nonprofit organizations (such as community or faith-based organizations) whose service area is limited to a single sub-State geographic area, such as a neighborhood, city, county, sub-State region, or interstate region comprised of multiple sub-State regions (such as Kansas City).''

b. New Text—''For the purposes of this SGA, applicants qualify as local entities if they are public organizations or private nonprofit organizations (which may include entities such as community colleges, workforce investment boards, community or faith-based organizations, and Tribal Governments) whose service area is limited to a single sub-State geographic area, such as a neighborhood, city, county, sub-State region, or interstate region comprised of multiple sub-State regions (such as Kansas City). A private nonprofit entity is an organization that is legally organized for the purposes of tax exempt nonprofit status under the Internal Revenue Service (IRS), or is actively pursuing IRS nonprofit tax exempt status.''

5. *Section III.D.1, ''Participants Eligible to Receive Training''* (page 30142) is revised to clarify that within the four categories of individuals that grantees must serve through grants awarded through this SGA, grantees

may serve a broad range of individuals. In the SGA, the language designated below as ''old text'' is replaced with the language designated as ''new text,'' as follows:

a. Old Text—''For specific definitions for these target populations, applicants must refer to Section VI.B.''

b. New Text—''For specific definitions for these target populations, applicants must refer to Section VI.B. Within these four categories, eligible participants may serve a broad range of individuals, including: Individuals with disabilities, individuals with limited English proficiency, Veterans, Indian and Native Americans, and older workers.''

FOR FURTHER INFORMATION CONTACT: Melissa Abdullah, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3346.

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

Donna Kelly,

Grant Officer, Employment & Training Administration.

[FR Doc. E9–17414 Filed 7–21–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment & Training Administration

[SGA/DFA–PY 08–17]

Solicitation for Grant Applications (SGA); Amendment One; State Labor Market Information Improvement Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA–PY 08–17.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on June 24, 2009, announcing the availability of funds and solicitation for grant applications (SGA) for State Labor Market Information Improvement Grants to be awarded through a competitive process. This amendment to the SGA clarifies items related to: (1) Strategies and Approaches (Section I.B.3.ii); (2) Evaluation Criteria, Deliverables (Section V.A.4.iii); (3) the number of applications from a Single State (Section III.A); and (4) Section B on Green Industries and Occupations (Supplementary Information). The changes in items 1 and 2 below were made in order to make the terminology for certificates or degrees match existing ETA definitions. The changes in items 3 and 4 below are to provide further clarification on number of applications per Single State and targeted industries. The document is hereby amended.

1. *Section I.B.3.ii, ''Funding Opportunity Description, Strategies and Approaches, Related Research Activities''* (page 30131) is revised by replacing the language designated below as ''old text'' with the language designated as ''new text'':

a. *Old text:* ''State-specific summaries of educational resources including post-secondary and higher educational institutions' courses and programs leading to industry-recognized credentials, certifications, or degrees;''

b. *New text:* ''State-specific summaries of educational resources including post-secondary and higher educational institutions' courses and programs leading to certificates or degrees;''

2. *Section V.A.4.iii, ''Application Review Information, Evaluation Criteria, Deliverables''* (page 30136) is revised by replacing the language designated below as ''old text'' with the language designated as ''new text'':

a. *Old text:* ''State-specific summaries of educational resources including post-secondary and higher educational institutions' courses and programs leading to industry-recognized credentials, certifications, or degrees;''

b. *New text:* ''State-specific summaries of educational resources including post-secondary and higher educational institutions' courses and programs leading to certificates or degrees;''

3. *Section III.A, ''Eligibility Information, Eligible Applicants''* (page 30131) is clarifying the number of applications that a Single State can submit. Accordingly, Section III.A. on p. 30131 is revised by replacing the language designated below as ''old text'' with the language designated as ''new text'':

a. *Old text:* ''Applicants must clearly indicate in the required grant abstract if they are applying as an individual State or as a consortium. Consortium applications must identify each participating State and designate a lead State as the applicant that will have the overall responsibility for administering the grant. The consortium lead State will coordinate reporting activities and must serve as the fiscal agent. Consortium applications will not count against the 'single application' per State limit for the partnering States, provided that the consortium proposal includes original strategies and is not duplicative of the strategies and deliverables included in the participating States' individual applications.''

b. *New text:* ''Applicants must clearly indicate in the required grant abstract if they are applying as an individual State or as a consortium. Consortium applications must identify each participating State and designate a lead State as the applicant that will have the overall responsibility for administering the grant. The consortium lead State will coordinate reporting activities and must serve as the fiscal agent. States may submit one application as a single State as well as one application as a consortium lead State. There is no limit to the number of consortium applications a State may be included with as a participating partner, provided that the consortium proposals include original strategies and are not duplicative of the strategies and deliverables included in the participating States' individual applications.''

4. **SUPPLEMENTARY INFORMATION**, *Section B ''Green Industries and Occupations''* on p. 30129 is revised to include the following statement:

New Text: ''We will also evaluate applications for projects that include emerging green occupations from industries that have not been discussed in this section.''

FOR FURTHER INFORMATION CONTACT: Willie Harris, Grant Officer, Division of Federal Assistance, at (202) 693–3344.

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

Donna Kelly,

Grant Officer, Employment & Training Administration.

[FR Doc. E9–17413 Filed 7–21–09; 8:45 am]

BILLING CODE 4510–FN–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: Dianne Salva, Trial Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

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*.

On May 21, 2009, the NCUA extended the terms and conditions of the TCCULGP and revised the fees charged to corporates participating in the program. It published notice of those changes in the **Federal Register**. 74 FR 25777 (May 29, 2009). On June 18, 2009 the NCUA Board decided to legally obligate the TCCUSF for any liability arising from the TCCULGP. At its July 16 meeting, the NCUA Board also decided to refine and improve the TCCULGP, by amending the agreement with participating corporates and adding sample forms that investors may use to file a claim for payment and assign their interests in the investment, in the event a default occurs under the program.

The Proof of Claim form and Assignment reproduced below are for the reference of interested parties. They are also available on the NCUA Web site at *http://www.ncua.gov/Resources/CorporateStabilization/Index.* While these are examples of such documents that the NCUA Board finds acceptable, their use is not mandatory. Investors who wish to use other written documents to file their claim or assign their interests may do so, as long as the documents they submit are acceptable to the NCUA Board in its capacity as manager of the TCCUSF.

FORM OF TCCULGP DEMAND AND PROOF OF CLAIM

[Date] _____

Executive Director, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428

Attention: _____

The undersigned is the holder (''Holder'') or a duly authorized representative (''Representative'') of a holder or holders of Temporary Corporate Credit Union Stabilization Fund (''TCCUSF'') guaranteed debt under the _____ [insert title of governing document and CUSIP Number, if any] dated _____ [insert month, day and year] by and between _____ Credit Union as the Issuer, and the undersigned (as amended from time to time, the ''Indenture''), pursuant to which the TCCUSF-guaranteed debt obligations were issued by _____Credit Union and are now outstanding. The undersigned Holder, or Representative on behalf of all holders, hereby demands payment of the following amounts that were due and payable on _____ [insert month, day and year] and that are now in default, such default not having been cured as of the date hereof:

Principal:

_____

Interest:

_____

together with payment when due of such other amounts as shall be required to satisfy the TCCUSF's guarantee obligations under the Temporary Corporate Credit Union Liquidity Guarantee Program (''TCCULGP'').

Payment of the foregoing amounts should be made to the undersigned by wire transfer to the following account:

Financial Institution Name:

_____

ABA Routing Number:

_____

Account Number:

_____

Special Instructions:

_____

The undersigned hereby makes the following certifications, which certifications are true and correct as of the date hereof:

1. The undersigned is either:

☐ The Holder; or

☐ The authorized Representative of all debtholders under the Indenture.

2. If the undersigned is the Holder, the undersigned further certifies that

(a) It hereby does make an assignment of each right, title and interest in the TCCUSF-guaranteed debt to the TCCUSF and to effect the transfer to the TCCUSF of all of Holder's claims in any insolvency proceeding. Included herewith is the executed and completed form of assignment of the Holder's interest in the TCCUSF-guaranteed debt and includes the right of the TCCUSF to receive any and all such distributions on the debt from the proceeds of the liquidation estate; and

(b) The undersigned hereby certifies that this demand is being made within 90 days of the occurrence of the payment default upon which the demand is made. The failure of the Holder to make demand for payment will deprive the Holder of all further rights and remedies with respect to guarantee claims.

3. If the undersigned is the authorized Representative of all debtholders under the Indenture, the undersigned further certifies that

(a) It has the financial capacity to act as Representative since the undersigned has sufficient capital and surplus to act as Representative under the eligibility provisions of the Indenture (Section ____), as evidenced by a current report of condition of the undersigned Representative. Such report of condition may take the form of a report of examination and is attached as Exhibit __. If the governing documents do not contain a financial eligibility requirement, the undersigned or an affiliate thereof must be ''well capitalized,'' as that term is defined in 12 U.S.C. § 1831o(b)(1) if the Representative is a bank, or 12 U.S.C. § 1790d or applicable NCUA regulations if the Representative is a credit union;

(b) It has the organizational capacity to act as Representative since the undersigned is a [i.e. New York banking corporation] with authority to commence business and to exercise corporate trust powers, as evidenced by the Organization Certificate of the undersigned, a copy of which is attached as Exhibit __;

(c) It has the exclusive authority to act on behalf of each and every debtholder under the Indenture and has a fiduciary responsibility to each such debtholder. The undersigned is expressly designated as the duly authorized representative of such holders for purposes of making claims and taking other permitted or required actions under the Program, as evidenced in Section __ of the Indenture on Page __. The indenture is attached hereto in its entirety as Exhibit __.

(d) It is expressly authorized to, and hereby does, make an assignment of each right, title and interest in the TCCUSF-guaranteed debt to the TCCUSF and to effect the transfer to the TCCUSF of each such holder's claims in any insolvency proceeding. Evidence of such authorization is provided in Section __ of the Indenture on page __. The Indenture is attached hereto in its entirety as Exhibit __. Also included herewith is the executed and completed form of assignment of the Holder's interest in the TCCUSF-guaranteed debt and includes the right of the TCCUSF to receive any and all such distributions on the debt from the proceeds of the liquidation estate.

(e) This demand is being made within 90 days of the occurrence of the payment default upon which the demand is made. The failure of the authorized Representative to make demand for payment will deprive the debtholder or debtholders of all further rights and remedies with respect to guarantee claims.

HOLDER

By:

_____

Printed Name:

_____

Title:

_____

_____

(Tax Identification No.)

_____

_____

(Mailing Address)

_____

(Telephone Number)

_____

(Fax Number)

OR

REPRESENTATIVE

By:

_____

Printed Name:

_____

Title:

(Tax Identification No.)

(Mailing Address)

(Telephone Number)

(Fax Number)

Form of TCCULGP Assignment

The undersigned is the holder (''Holder'') or a duly authorized representative (''Representative'') of a holder or holders of Temporary Corporate Credit Union Stabilization Fund (''TCCUSF'') guaranteed debt under the _____ [insert title of governing document and CUSIP Number, if any] dated _____ [insert month, day and year] by and between _____ Credit Union (''Issuer''), as the Issuer, and the undersigned (as amended from time to time, the ''Agreement''), pursuant to which the TCCUSF-guaranteed debt obligations were issued by ____ Credit Union and are now outstanding. The undersigned Holder, or Representative on behalf of all holders, has demanded payment of amounts due and payable, and that are now in default, such default not having been cured as of the date hereof.

In conjunction with that demand, the undersigned Holder, or Representative on behalf of all holders, has executed and submits this Assignment made pursuant to the terms of Section [___] of the Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Agreement.

For value received, the undersigned Holder, or Representative on behalf of all holders, (the ''Assignor''), hereby assigns to the National Credit Union Administration (''NCUA'') TCCUSF, without recourse, all of the Assignor's respective rights, title and interest in and to: (a) The promissory note or other instrument evidencing the debt issued under the Agreement (the ''Note''); (b) the Agreement pursuant to which the Note was issued; and (c) any other instrument or agreement executed by the Issuer regarding obligations of the Issuer under the Note or the Agreement (collectively, the ''Assignment'').

The Assignor acknowledges and agrees that this Assignment is subject to the Agreement and to the following:

1) In the event the Assignor receives any payment under or related to the Note or the Agreement from a party other than the TCCUSF (a ''Non-TCCUSF Payment''):

a. After the date of demand for a guarantee payment on the TCCUSF pursuant to the TCCULGP, but prior to the date of the TCCUSF's first guarantee payment under the Agreement, the Assignor shall promptly but in no event later than five (5) Business Days after the receipt notify the TCCUSF of the date and the amount of such Non-TCCUSF Payment and shall apply such payment as payment made by the Issuer, and not as a guarantee payment made by the TCCUSF under the TCCULGP, and therefore, the amount of such payment shall be excluded from this Assignment; and

b. After the TCCUSF's first guarantee payment under the Agreement, the Assignor shall forward promptly to the TCCUSF such Non-TCCUSF Payment in accordance with the payment instructions provided in writing by the TCCUSF.

2) Acceptance by the Assignor of payment pursuant to the TCCULGP for its own behalf, or in the case of a Representative Assignor, on behalf of the holders, shall constitute a release by such Holder or holders of any liability of the TCCUSF and the NCUA under the TCCULGP with respect to such payment.

The person who is executing this Assignment on behalf of the Assignor hereby represents and warrants to the NCUA and the TCCUSF that he/she/it is duly authorized to do so.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed and delivered this ___ day of ____, 20_.

Very truly yours,

[Assignor]

By:

Printed Name:

Title:

For more information about the original and revised TCCULGPs, including terms, conditions, participants, and forms, interested parties may contact Senior Analyst Dave Shetler of the NCUA Office of Corporate Credit Unions.

Dated: July 16, 2009.

Mary Rupp,

Secretary of the Board.

[FR Doc. E9–17339 Filed 7–21–09; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 74 FR 23219, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain*. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at 703–292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Implementation Evaluation of the ADVANCE Program.

OMB Control No.: 3145–NEW.

Abstract:

The ADVANCE Program was established by the National Science Foundation in 2001 to address the underrepresentation and inadequate advancement of women on STEM (Science, Technology, Engineering, and Mathematics) faculties at postsecondary institutions. The evaluation being conducted by the Urban Institute focuses on the implementation of ADVANCE projects at institutions

throughout the nation. The three major funding components—institutional transformation, leadership, and partnership awards—as well as all cohorts funded that completed their funding cycles will be included. The study will rely on a thorough review of project documents, telephone interviews with all grantees, and detailed case studies at selected sites. The goal of the evaluation will be to identify models of implementation and, depending on outcomes by model, conduct case studies at selected institutions to understand how ADVANCE models operate and may be effective in differing settings.

Respondents: Faculty and staff at institutions of higher education awarded an ADVANCE grant from NSF.

Estimated Number of Annual Respondents: 200 (total).

Burden on the Public: 200 hours.

Dated: July 17, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–17360 Filed 7–21–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2009–0320]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, Section III.G, ''Fire Protection of Safe Shutdown Capability,'' for Renewed Facility Operating License No. DPR–16, for the use of operator manual actions in lieu of the requirements specified in Section III.G.2, as requested by Exelon Generation Company, LLC (the licensee), for operation of the Oyster Creek Nuclear Generating Station (Oyster Creek), located in Ocean County, New Jersey. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions to 10 CFR Part 50, Appendix R, Section III.G.2 based on 20 operator manual actions contained in the licensee's Fire Protection Program (FPP). The licensee's FPP requires that the identified operator manual actions be performed outside of the control room to achieve shutdown following fires in certain fire areas. The licensee states that each of the manual actions were subjected to a manual action feasibility review for Oyster Creek that determined that the manual actions are feasible and can be reliably performed.

The proposed action is in accordance with the licensee's application dated March 3, 2009 (available in the Agencywide Documents Access and Management System (ADAMS) Accession No. ML090630132).

The Need for the Proposed Action

The proposed exemption from 10 CFR Part 50, Appendix R, was submitted in response to the need for an exemption as identified by NRC Regulatory Information Summary (RIS) 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions.'' The RIS noted that NRC inspections identified that some licensees had relied upon operator manual actions, instead of the options specified in Paragraph III.G.2 of 10 CFR Part 50, Appendix R, as a permanent solution to resolve issues related to Thermo-Lag 330–1 fire barriers. The licensee indicates that some of the operator manual actions referenced in the March 3, 2009, application were previously included in correspondence with the NRC and found acceptable in a fire protection-related Safety Evaluation (SE) dated March 24, 1986 (ADAMS Accession No. 8604070468). The remaining operator manual actions referenced were explicitly considered in an SE dated June 25, 1990 (ADAMS Accession No. 9006280092), supporting a separate Appendix R exemption. RIS 2006–10, however, identifies that an exemption under 10 CFR Section 50.12 is necessary for use of the manual actions in lieu of the requirements of 10 CFR Part 50, Appendix R, III.G.2, even if the NRC previously issued an SE that found the manual actions acceptable. RIS 2006–10 and Enforcement Guidance Memorandum 07–004 (ADAMS Accession No. ML071830345) provided that exemption requests must be submitted by March 6, 2009. The licensee's proposed exemption provides the formal vehicle for NRC approval for the use of the specified operator manual actions instead of the options specified in 10 CFR Part 50, Appendix R, III.G.2.

Environmental Impacts of the Proposed Action

The NRC staff evaluated the manual operator actions presented in the proposed exemption in NRC SEs dated March 24, 1986, and June 25, 1990, and found that they maintained a safe shutdown capability that satisfies the requirements of 10 CFR Part 50, Appendix R, III.G. Therefore, the proposed action will not significantly increase the probability or consequences of accidents, nor does the proposed action introduce a new or different kind of accident. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. None of the manual actions to be performed are in areas that have radiation levels that would preclude entry. Further, the licensee stated that the highest expected dose during performance of the manual actions is 100 millirem (2 percent of the annual occupational limit) and the majority of manual actions are not in radiological controlled areas. Based on this consideration, the NRC staff finds that there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological impacts associated with the proposed action. The NRC staff, thus concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the 1974 Final Environmental Statement for Oyster Creek and NUREG–1437, Vol. 1, Supplement 28, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Oyster Creek Nuclear

Generating Station, Final Report—Main Report.''

Agencies and Persons Consulted

In accordance with its stated policy, on May 4, 2009, the NRC staff consulted with the New Jersey State official, Ron Zak of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 3, 2009 (ADAMS Accession No. ML090630132). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of July 2009.

For the Nuclear Regulatory Commission.

G. Edward Miller,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–17385 Filed 7–21–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318; NRC–2009–0321]

Calvert Cliffs Nuclear Power Plant, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Calvert Cliffs Nuclear Power Plant, Inc. (the licensee) to withdraw its October 1, 2008, application for proposed amendment to Facility Operating License No. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would introduce new license conditions requiring the reporting of reactor vessel (RV) inservice inspection (ISI) information and analyses as specified in **Federal Register** Notice (72 FR 56275) dated October 3, 2007, ''Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events.'' These amendments were a required part of a code relief request, submitted by the licensee on October 1, 2008, to extend the RV ISI 10-year inspection interval for RV weld examinations.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 16, 2008 (73 FR 76409). However, by letter dated July 8, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 1, 2008, and the licensee's letter dated July 8, 2009, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of July 2009.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–17382 Filed 7–21–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; NRC–2009–0322]

Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License Nos. DPR–26 and DPR–64, Indian Point Nuclear Generating Unit Nos. 2 and 3

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its July 8, 2008 application for proposed amendment to Facility Operating License Nos. DPR–26 and DPR–64 for Indian Point Nuclear Generating Unit Nos. 2 and 3, located in Westchester County, New York.

The proposed amendments would have added license conditions to support implementation of an extended inservice inspection interval for reactor vessel weld inspections.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 9, 2008 (73 FR 52416). However, by letter dated July 1, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 8, 2008, and the licensee's letter dated July 1, 2009, which withdrew the application for a license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of July 2009.

For the Nuclear Regulatory Commission.

John P. Boska,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–17386 Filed 7–21–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2009–46 and CP2009–47; Order No. 249]

New Competitive Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add two additional Global Plus 1 contracts to the Competitive Product List. This notice addresses procedural steps associated with these filings.

DATES: Comments are due July 23, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Notice of Filing
III. Ordering Paragraphs

I. Background

On July 13, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 1 contracts, which it states fits within the previously established Global Plus Contracts product.[1] The Postal Service states that the instant contracts are functionally equivalent to previously submitted Global Plus 1 contracts, are filed in accordance with Order No. 85, and are supported by Governors' Decision No. 08–8 filed in Docket No. CP2008–8.[2] Notice at 1.

The Notice also states that in Docket No. CP2008–8, the Governors have established prices and classifications for competitive products not of general applicability for Global Plus Contracts.[3] The Postal Service states that the instant contracts are the immediate successor contracts to those in Docket Nos. CP2008–9 and CP2008–10, both of which are to expire soon, which the Commission found to be functionally equivalent in Order No. 85.

The Postal Service contends that the instant contracts should be included within the Global Plus 1 product on the Competitive Product List. *Id.*

In support, the Postal Service has also filed redacted versions of each contract and related materials as Attachments 1–A and 1–B. Redacted versions of the certified statements required by 39 CFR 3015.5 are included as Attachments 2–A and 2–B, respectively. The Postal Service states that the contracts should be included within the Global Plus 1 product and requests that the instant contracts be considered the ''baseline contracts for future functional equivalency analyses concerning this product.'' *Id.* at 2.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. The contracts become effective August 1, 2009, unless regulatory reviews affect that date, and have a one-year term.

The Postal Service maintains that certain portions of each contract and certified statement required by 39 CFR 3015.5(c)(2), containing names and identifying information of the Global Plus 1 customers, related financial information, as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3.

The Postal Service asserts the contracts are functionally equivalent because they share similar cost and market characteristics and should be classified as a single product. *Id.* at 3. It states that while the precursor contracts filed in Docket Nos. CP2008–9 and CP2008–10 exhibited minor distinctions based on differences in customers' negotiations, business needs or relationship with the Postal Service, the new versions of the agreements differ primarily in the method used for structuring the discounts offered. *Id.* at 4. The Postal Service also states that the instant contracts' customers are the same Postal Qualified Wholesalers (PQWs) as the parties to the contracts in Docket Nos. CP2008–9 and CP2008–10. The essence of the service to the PQW customers is offering price-based incentives to commit large amounts of mail volume or postage revenue for International Priority Airmail (IPA), International Surface Air Lift (ISAL), Express Mail International (EMI), and Priority Mail International (PMI).[4]

The Postal Service indicates that the instant contracts have material differences which include removing retroactivity provisions; clarifying aspects subject to regulatory oversight; expanding entry locations; restructuring price incentives, commitments, and penalties; and clarifying the parties' obligations in the event of termination. *Id.* at 4–7.

The Postal Service maintains these differences only add detail or amplify processes included in prior Global Plus 1 contracts. It contends because the contracts have the same cost attributes and methodology as well as similar cost and market characteristics, the differences do not affect the fundamental service being offered or the essential structure of the contracts. *Id.* at 7–8. It states the contracts are substantially similar both to one another and to the precursor Global Plus 1 contracts. Therefore, it asserts these contracts are ''functionally equivalent in all pertinent respects.'' *Id.* at 8.

II. Notice of Filing

The Commission establishes Docket Nos. CP2009–46 and CP2009–47 for consideration of the matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the instant contracts are consistent with the policies of 39 U.S.C. 3632, 3622, or 3642. Comments are due no later than July 23, 2009.

The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. CP2009–46 and CP2009–47 for consideration of the issues raised in these dockets.

2. Comments by interested persons on issues in these proceedings are due no later than July 23, 2009.

3. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the

[1] Notice of the United States Postal Service of Filing Two Functionally Equivalent Global Plus 1 Contracts Negotiated Service Agreements, July 13, 2009 (Notice).

[2] *See* Docket No. CP2008–8 through CP2008–10, PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, June 27, 2008.

[3] *See* Docket No.CP2008–8, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Plus Contracts, June 2, 2008, at 1.

[4] The Postal Service states the commitments also account for Global Bulk Economy and Global Direct items mailed under a separate but related Global Plus 2 contract with each customer. The Global Plus 2 contracts are the subject of a separate competitive products proceeding.

interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

Issued: July 16, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–17496 Filed 7–21–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28819; File No. 812–13578]

The Alger Funds, et al.; Notice of Application

July 16, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to (a) section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: The Alger Funds, The Alger American Fund, The Alger Institutional Funds, The Alger Funds II (formerly, The Spectra Funds), and Alger China-U.S. Growth Fund (formerly, The China-U.S. Growth Fund) (each, a ''Trust'' and collectively, the ''Trusts''), and Fred Alger Management, Inc. (''FAM'').

Filing Dates: The application was filed on September 25, 2008 and amended on March 12, 2009, June 24, 2009 and July 14, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 10, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549–1090. Applicants, 111 Fifth Avenue, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Attorney Adviser, at (202) 551–6819 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. Each Trust consists of one or more series (''Funds''). FAM, a New York corporation and an indirect wholly-owned subsidiary of Alger Associates, Inc., is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser and administrator of each Fund.[1]

2. Some Funds may make short-term loans to banks or other entities by purchasing bank time deposits. Other Funds may need to borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. Currently, certain Funds have access to uncommitted bank loans from their custodian bank for temporary borrowing purposes.

3. If Funds borrow from their custodian, they pay interest on the loan at a rate that is significantly higher than the rate that is earned by other (non-borrowing) Funds on investments in bank time deposits. Applicants assert that this differential represents the profit earned by the lender on loans and is not attributable to any material difference in the credit quality or risk of such transactions. In addition, while bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds would incur commitment fees and/or other charges involved in obtaining a bank loan.

4. The Trusts seek to enter into master interfund lending agreements (''Interfund Lending Agreements'') with each other on behalf of the Funds that would permit each Fund to lend money directly to and borrow directly from other Funds through a credit facility for temporary purposes (an ''Interfund Loan''). Applicants believe that the proposed credit facility would both substantially reduce the Funds' potential borrowing costs and enhance the ability of the lending Funds to earn higher rates of interest on their short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish and maintain committed lines of credit or other borrowing arrangements with unaffiliated banks. Alger Money Market Fund, a series of The Alger Funds, will not participate as a borrower in the proposed credit facility. Additionally, a number of Funds are barred by their fundamental policies from participating as lenders in the proposed credit facility.[2]

5. Applicants anticipate that the proposed credit facility would provide a borrowing Fund with significant savings at times when the cash position of the borrowing Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). However, redemption

[1] Applicants request that the relief also apply to any other registered management investment company that currently, or in the future, is part of the same ''group of investment companies'' as the Trusts, as defined in section 12(d)(1)(G)(ii) of the Act (included in the term ''Trusts''). All entities that currently intend to rely on the requested order have been named as applicants. Any other entity that relies on the requested order in the future will comply with the terms and conditions set forth in the application.

[2] Each of Alger LargeCap Growth Fund, Alger SmallCap Growth Institutional Fund, Alger MidCap Growth Institutional Fund, Alger LargeCap Growth Institutional Fund and Alger Capital Appreciation Institutional Fund is prohibited from ''making loans to others, except through purchasing qualified debt obligations, lending portfolio securities or entering into repurchase agreements.''

requests normally are effected immediately. The proposed credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose that a Fund could use the proposed credit facility when a sale of securities ''fails'' due to circumstances beyond the Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. ''Sales fails'' may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Alternatively, the Fund could ''fail'' on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same-day settlement basis, earning a lower return on the investment. Use of the proposed credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without the Fund incurring custodian overdraft or other charges.

7. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those that would be payable under short-term loans offered by banks. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in overnight bank time deposits. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Time Deposit Rate'' and the ''Bank Loan Rate,'' both as defined below. The Time Deposit Rate for any day would be the highest or best (after giving effect to factors such as the credit quality of the issuer) rate available to a lending Fund from investment in overnight bank time deposits. The Bank Loan Rate for any day would be calculated by FAM each day an Interfund Loan is made according to a formula established by each Trust's board of trustees (the ''Trustees'') intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., federal funds plus 50 basis points) and would vary with this rate so as to reflect changing bank loan rates. In addition, each Trust's Trustees would periodically review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Trust's Trustees.

9. The proposed credit facility would be administered by FAM's fund administration department and a compliance professional within FAM (collectively, the ''Credit Facility Team''). No portfolio manager of any Fund will serve as a member of the Credit Facility Team. Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Credit Facility Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from the portfolio managers of the Funds. Applicants anticipate that there typically will be far more available uninvested cash each day than borrowing demand. Therefore, after the Credit Facility Team has allocated cash for Interfund Loans, the Credit Facility Team will invest any remaining cash in accordance with the standing instructions of the portfolio managers or such remaining amounts will be invested directly by the portfolio managers of the Funds.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Trust's Trustees, including a majority of Trustees who are not ''interested persons'' of the Trust, as that term is defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. FAM would: (a) Monitor the Interfund Loan Rate and the other terms and conditions of the loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Trustees concerning any transactions by the Funds under the proposed credit facility and the Interfund Loan Rate charged.

12. FAM, through the Credit Facility Team, would administer the proposed credit facility as a disinterested fiduciary as part of its duties under the relevant management, advisory or administrative contract with each Fund and would receive no additional fee as compensation for its services in connection with the administration of the proposed credit facility. FAM may collect standard pricing, record keeping, bookkeeping and accounting fees associated with the transfer of cash and/or securities in connection with bank time deposit and lending transactions generally, including transactions effected through the proposed credit facility. Such fees would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the proposed credit facility unless: (a) the Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information; and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations and organizational documents.

14. In connection with the credit facility, applicants request an order under section 6(c) of the Act exempting them, to the extent described herein, from the provisions of sections 18(f) and 21(b) of the Act; under section 12(d)(1)(J) of the Act exempting them from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act, to permit certain joint arrangements and to allow them to participate in the proposed credit facility.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property

from a registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person, directly or indirectly, if that person controls or is under common control with that company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state that the Funds may be under common control by virtue of having FAM as their common investment adviser and/or by having common Trustees and officers.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) FAM, through the Credit Facility Team, would administer the program as a disinterested fiduciary as part of its duties under the relevant management, advisory or administrative contract with each Fund; (b) all Interfund Loans would consist only of uninvested cash reserves that the lending Fund otherwise would invest in bank time deposits; (c) the Interfund Loans would not involve a significantly greater risk than bank time deposits; (d) the lending Fund would receive interest at a rate higher than it could otherwise obtain through bank time deposits; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other terms and conditions that applicants propose also would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act generally prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with the limitations set forth in that section.

5. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1). Applicants also state that any pledge of assets in connection with an Interfund Loan could be construed as a purchase of the borrowing Fund's securities or other property for purposes of section 17(a)(2) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below. Applicants also state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an Interfund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).

6. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investments. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or shareholders, and that FAM will receive no additional compensation for its services in administering the credit facility. Applicants also note that the entire purpose of the proposed credit facility is to provide economic benefits for all the participating Funds and their shareholders.

7. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief under section 6(c) from section 18(f)(1) to the limited extent necessary to implement the proposed credit facility (because the lending Funds are not banks).

8. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

9. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or any affiliated person of such a person, when acting as principal, from effecting any joint transaction in which the investment company participates, unless, upon application, the transaction has been approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

10. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants believe that the proposed credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the proposed credit facility would be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Time Deposit Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Time Deposit Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (a) more favorable to the lending Fund than the Time Deposit Rate; and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding bank borrowings, any Interfund Loans to the Fund: (a) Will be at an interest rate equal to or lower than the interest rate of any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the proposed credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the proposed credit facility only on a secured basis. A Fund may not borrow through the proposed credit facility or from any other source if its total outstanding borrowings immediately after such borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all of its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the proposed credit facility if the loan would cause its aggregate outstanding loans through the proposed credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the proposed credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions for the preceding seven calendar days or 102% of the Fund's sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the proposed credit facility must be consistent with its investment objectives and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the proposed credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the proposed credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions of the portfolio managers or such remaining amounts will be invested directly by the portfolio managers of the Funds.

13. FAM will monitor the Interfund Loan Rate and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Trustees of each Trust concerning the participation of the Funds in the proposed credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Trustees of each Trust, including a majority of the Independent Trustees, will:

(a) Review, no less frequently than quarterly, each Fund's participation in the proposed credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) Establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) Review, no less frequently than annually, the continuing appropriateness of each Fund's participation in the proposed credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, FAM will promptly refer such loan for arbitration to an independent arbitrator selected by the Trustees of each Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[3] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the proposed credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time each Interfund Loan is made on overnight bank time deposits and such other information presented to the Fund's Trustees in connection with the review required by conditions 13 and 14.

17. FAM will prepare and submit to the Trustees for review an initial report describing the operations of the proposed credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the proposed credit facility, FAM will report on the operations of the proposed credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates FAM's assertion that it has established procedures reasonably designed to achieve compliance with the terms and conditions of the order. The report will be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10, and it shall be filed pursuant to Item 77Q3 of Form N–SAR as such Statements or Form may be revised, amended, or superseded from time to time. In particular, the report shall address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate will be higher than the Time Deposit Rate, but lower than the Bank Loan Rate;

(b) Compliance with the collateral requirements as set forth in the application;

(c) Compliance with the percentage limitations on interfund borrowing and lending;

(d) Allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and

(e) That the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, each Fund's independent auditors, in connection with their audit examination of the Funds, will continue to review the operation of the proposed credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form NSAR.

18. No Fund will participate in the proposed credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

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[3] If the dispute involves Funds with different Trustees, the respective Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold Closed Meetings on Thursday, July 23, 2009 at 2 p.m. and on Friday, July 24, 2009 at 8 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meetings in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, July 23, 2009 will be:

institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

The subject matter of the Closed Meeting scheduled for Friday, July 24, 2009 will be:

consideration of amici consideration; and litigation matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 17, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–17488 Filed 7–20–09; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–39; File No. S7–14–09]

Privacy Act of 1974: Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice to establish systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission (''Commission'' or ''SEC'') gives notice of proposing to establish the following five new Privacy Act systems of records:

''Information Pertaining or Relevant to SEC Registrants and Their Activities (SEC–55)'', ''Mailing, Contact and Other Lists (SEC–56)'', ''International Program Oversight Database (International-POD) (SEC–57)'', ''System for Enforcement Case Tracking and Routing (SEC–58)'', and ''Office of Interpretation and Guidance Log; Office of Broker-Dealer Finances NRSRO Log; and Office of Financial Responsibility Log (SEC–59)''.

DATES: The proposed systems will become effective August 31, 2009 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before August 21, 2009.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–14–09 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 S7–14–09. This file number should be included on the subject line if e-mail is used. To help us 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/other.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, Office of Information Technology, 202–551–7209.

SUPPLEMENTARY INFORMATION: The Commission gives notice of the proposed establishment of five new systems of records as follows: ''Information Pertaining or Relevant to SEC Registrants and Their Activities (SEC–55)'', which contains records on individuals associated with entities or persons that are registered with the SEC; ''Mailing, Contact and Other Lists (SEC–56)'', which contains records related to individuals and employees who submit request for information, subscriptions, inquiries, guidance, informal advice and other assistance to the SEC; ''International Program Oversight Database (International-POD) (SEC–57)'', which contains information related to an SEC investigation, international institute training, foreign regulators and stock exchanges, SEC travel records and United States Agency for International Development (USAID) reimbursable programs; ''System for Enforcement Case Tracking and Routing (SEC–58)'', which contains correspondence related to litigation, pleadings in administrative proceedings, and other documents; and ''Office of Interpretation and Guidance Log; Office of Broker-Dealer Finances NRSRO Log; and Office of Financial Responsibility Log (SEC–59)'', which contains records of inquiries, requests, comments or other communications submitted to the Division of Trading and Markets' Office of Interpretation and Guidance, the Office of Broker-Dealer Finances relating to NRSROs or to the Office of Financial Responsibility, respectively.

The Commission has submitted a report of the new systems of records to the appropriate Congressional committees and to the Director of the Office of Management and Budget (''OMB'') as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Accordingly, the Commission is proposing five new systems of records to read as follows:

SEC–55

SYSTEM NAME:

Information Pertaining or Relevant to SEC Registrants and Their Activities.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Records also are maintained in the SEC Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records concern individuals associated with entities or persons that are registered with the SEC as broker-dealers, investment advisers, investment companies, self-regulatory organizations, clearing agencies, nationally recognized statistical rating organizations, and transfer agents (individually, a ''Registrant;'' collectively, ''Registrants''). Records may also concern persons, directly or indirectly, with whom Registrants or their affiliates have client relations or business arrangements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain information relating to the business activities and transactions of Registrants and their associated persons, as well as their compliance with provisions of the federal securities laws and with rules of self-regulatory organizations and clearing agencies. Records may also contain information regarding the business activities and transactions of individuals or entities with whom Registrants have client relations or business arrangements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 78a *et seq.,* 80a–1 *et seq.,* and 80b–1 *et seq.*

PURPOSE(S):

1. For use by authorized SEC personnel in connection with their official functions including, but not limited to, the conduct of examinations for compliance with federal securities laws, investigations into possible violations of the federal securities laws, and other matters relating to the SEC's regulatory and law enforcement functions.

2. To maintain continuity within the SEC as to each Registrant and to provide SEC staff with the background and results of earlier examinations of Registrants, as well as an insight into current industry practices or possible regulatory compliance issues.

3. To conduct lawful relational searches or analysis or filtering of data in matters relating to the SEC's examination, regulatory or law enforcement functions.

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 Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the SEC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or

fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To coordinate law enforcement activities between the SEC and other federal, state, local or foreign law enforcement agencies, securities self-regulatory organizations and foreign securities authorities.

3. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

4. In connection with investigations or disciplinary proceedings by a state securities regulatory authority, a foreign securities authority, or by a self-regulatory organization involving one or more of its members.

5. Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, foreign or a securities-related self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

6. In connection with their regulatory and enforcement responsibilities mandated by the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), or state or foreign laws regulating securities or other related matters, records in this system of records may be disclosed to national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory or law enforcement agencies or organizations, or regulatory or law enforcement agencies of a foreign government.

7. In any proceeding where the federal securities laws are in issue or in which the SEC or past or present members of its staff is a party or otherwise involved in an official capacity.

8. In connection with proceedings by the SEC pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

9. When considered appropriate, referred to a bar association or similar federal, state or local licensing authority for possible disciplinary action.

10. To disclose as a ''routine use'' to a federal, state or local governmental authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

11. To disclose to a federal, state or local governmental authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

12. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

13. To disclose as a routine use to any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47) or the SEC's Rules of Practice, 17 CFR 201 *et seq.* or otherwise, where such trustee, receiver, master, special counsel or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the SEC of the federal securities laws or the SEC's Rules of Practice.

14. To disclose to any person during the course of any inquiry or investigation conducted by the SEC staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

15. To disclose to any person with whom the SEC contracts to reproduce, by typing, photocopy or other means, any record within this system for use by the SEC and its staff in connection with their official duties or to any person who is utilized by the SEC to perform clerical, stenographic or data analysis functions relating to the official business of the SEC.

16. To disclose in reports published by the SEC pursuant to authority granted in the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)).

17. To disclose to members of advisory committees that are created by the SEC or by Congress to render advice and recommendations to the SEC or to Congress, to be used solely in connection with their official, designated functions.

18. To disclose as a routine use to any person who is or has agreed to be subject to the SEC's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the SEC of possible violations of federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the SEC for such violations, or otherwise in connection with the SEC's enforcement or regulatory functions under the federal securities laws.

19. To disclose to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

20. To aid in responding to requests from Members of Congress and the public relating to particular Registrants and their activities.

21. To disclose to interns, grantees, experts and contractors who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need

access to the records for the purpose of assisting the Commission in the efficient administration of its programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format, paper form, magnetic disk and tape. Electronic records are stored in computerized databases. Paper, magnetic disk or tape records are stored in locked file rooms or metal file cabinets.

RETRIEVABILITY:

Information is indexed by name of the Registrant or by certain SEC identification numbers. Information regarding individuals may be obtained through the use of cross-reference methodology or some form of personal identifier. Access for inquiry purposes is via a computer terminal.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Record sources include filings made by Registrants; information obtained through examinations or investigations of Registrants and their activities; information contained in SEC correspondence with Registrants; information received from other federal, state, local, foreign or other regulatory organizations or law enforcement agencies; complaint information received by the SEC via letters, telephone calls, e-mails or any other form of communication; and data obtained from third-party sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–56

SYSTEM NAME:

Mailing, Contact and Other Lists.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Records are also maintained in the SEC Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records contain information related to individuals and employees who submit requests for information, subscriptions, inquiries, guidance, informal advice and other assistance to the SEC in any format, including but not limited to paper, telephone, and electronic submissions; SEC personnel assigned to handle such correspondence; individuals who have registered for SEC events and responded to questionnaires, request forms and feedback forms.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain information relating to but not limited to name, title, affiliation, mailing address, telephone number, cell phone number, fax number, e-mail address, business affiliation, other contact and related supporting information provided to the Commission by individuals or derived from other sources covered by this system of records and not currently covered under an existing SORN.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77a *et seq.,* 78a *et seq.,* 80a–1 *et seq.,* and 80b–1 *et seq.*

PURPOSE(S):

1. To track and process complaints/inquiries/requests/comments and communications from members of the public, including industry representatives, counsel, and others.

2. To handle subscription requests for informational literature, reports, and other SEC materials, via individual, mass, and targeted mailing in the furtherance of SEC activities.

3. To process registration to SEC-related activities and events.

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 Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

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

2. Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, foreign or a securities self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. Records in this system may, in the discretion of the Commission's staff, be disclosed to any person during the course of any inquiry or investigation conducted by the Commission staff, or in connection with civil litigation, if the staff has reason to believe that the

person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

4. A record or information in this system may be disclosed to any person with whom the Commission contracts to reproduce, by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or to any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission.

5. Records or information in records contained in this system may be disclosed to members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official, designated functions.

6. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

7. To interns, grantees, experts and contractors who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format, paper form, magnetic disk and tape. Electronic records are stored in computerized databases. Paper, magnetic disk or tape records are stored in locked file rooms or metal file cabinets.

RETRIEVABILITY:

Records may be retrieved by any of the following: E-mail address, name, or an assigned file number for the purpose of responding to the requestor. Information may additionally be retrieved by other personal identifiers.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

FOR SEC HEADQUARTERS:

U. S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Components: Office of the Chairman and Commissioners, Division of Corporation Finance, Division of Trading and Markets, Division of Investment Management, Division of Enforcement, Office of the General Counsel, Office of the Chief Accountant, Office of Economic Analysis, Office of Compliance Inspections and Examinations, Office of International Affairs, Office of Investor Education and Advocacy, Office of Information Technology, Office of the Executive Director, Office of Human Resources, Office of Financial Management, Office of Administrative Services, Office of Risk Assessment, Office of the Inspector General, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, Office of Equal Employment Opportunity, and Office of Administrative Law Judges.

FOR REGIONAL OFFICES:

New York Regional Office, Regional Director, 3 World Financial Center, Suite 400, New York, NY 10281–1022; Boston Regional Office, Regional Director, 33 Arch Street, 23rd Floor, Boston, MA 02110–1424; Philadelphia Regional Office, Regional Director, The Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106–1532; Miami Regional Office, Regional Director, 801 Brickell Avenue, Suite 1800, Miami, FL 33131–4901, Atlanta Regional Office, Regional Director, 3475 Lenox Road, NE., Suite 1000, Atlanta, GA 30326–1232; Chicago Regional Office, Regional Director, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604–2908; Denver Regional Office, Regional Director, 1801 California Street, Suite 1500, Denver, CO 80202–2656; Fort Worth Regional Office, Regional Director, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, TX 76102–6882; Salt Lake Regional Office, Regional Director, 15 West South Temple Street, Suite 1800, Salt Lake City, UT 84101–1573; Los Angeles Regional Office, Regional Director, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036–3648; San Francisco Regional Office, Regional Director, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104–4716.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

The information is supplied by the individual and/or company making the request. Data may also be added pertaining to the fulfillment of the request. Information may also be obtained from other SEC records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–57

SYSTEM NAME:

International Program Oversight Database (International—POD).

SYSTEM LOCATION:

Office of International Affairs, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Foreign and domestic contacts for Enforcement workload/Commission and foreign requests; foreign and domestic contacts for policy requests; Foreign officials trained in SEC Headquarters; Chairmen, CEOs, and Presidents of foreign regulators and stock exchanges; SEC staff traveling overseas; and information on vendors providing support for SEC's technical assistance program and individuals entitled to USAID reimbursements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contact information of individuals related to Enforcement cases and policy requests. Contact information of international institute foreign officials trained in SEC Headquarters; Contact information for Chairmen, CEOs, and Presidents of foreign regulators and stock exchanges; SEC staff traveling overseas; and information on vendors providing support for SEC's technical assistance program and individuals entitled to USAID reimbursements.

Correspondence relevant to the matter, internal staff memoranda, Commission Minutes and Commission Orders, working papers of the staff and other documents and records relating to the matter, opening reports, progress reports and closing reports, miscellaneous records relating to cross-border investigations or litigation and other international enforcement and regulatory matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77s, 77t, 78u, 77uuu, 80a–41, 80b-9, and 17 CFR 202.5.

PURPOSE(S):

Tracks data gathered by the Office of International Affairs with respect to processing (1) requests for enforcement cooperation with foreign regulators and law enforcement agencies; (2) international regulatory policy matters designed to protect investors, improve market efficiency, and eliminate opportunities for ''regulatory arbitrage''; (3) technical assistance and international training programs for emerging securities markets; (4) directory of contacts for foreign regulators and stock exchanges; (5) SEC staff foreign travel; and (6) USAID Reimbursement.

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 Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

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

2. To coordinate law enforcement activities between the SEC and other federal, state, local or foreign law enforcement agencies, securities self-regulatory organizations, and foreign securities authorities.

3. Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, or local, a foreign governmental authority or foreign securities authority, or a securities self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

5. To respond to inquiries from Members of Congress, the press and the public which relate to specific matters that the Commission has investigated and to matters under the Commission's jurisdiction.

6. To interns, grantees, experts and contractors who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format and paper form. Electronic records are stored in computerized databases. Paper records are stored in locked file rooms or metal file cabinets.

RETRIEVABILITY:

Data are retrievable by the individual's name or other identifier, such as case number, name, as well as non-identifying information.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of International Affairs, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1004.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from enforcement requests related to an SEC investigation; international institute training programs; foreign regulators and stock exchanges; SEC travel records; and USAID reimbursable programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–58

SYSTEM NAME:

System for Enforcement Case Tracking and Routing (SECTR).

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Files may also be maintained in the Commission's Regional Offices that conducted an investigation or litigation, or at a records management company under contract with the Commission. Closed investigatory files are stored at a federal records center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on persons who have been involved in Commission investigations or litigation, or in activities which violated or may have violated federal, state or foreign laws relating to transactions in securities, the conduct of securities business or investment advisory activities, and banking or other financial activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relevant to the matter, internal staff memoranda, Commission Orders, settlement offers, Wells submissions, sworn financial statements, affidavits, transcripts of testimony, copies of pleadings, documents and other evidence obtained in the course of the matter, computerized records, working papers of the staff, and other documents and records relating to the matter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77s, 77t, 78u, 77uuu, 80a–41, 80b–9, and 17 CFR 202.5.

PURPOSE(S):

The purpose of this system of records is to create and maintain an electronic database of enforcement matters reviewed and comments provided by staff of the Division of Trading and Markets to the Division of Enforcement; and to maintain a record of communications within the Division of Trading and Markets relating to the enforcement matters reviewed.

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 Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

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

2. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies, and to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

3. In connection with their regulatory and enforcement responsibilities mandated by the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), or state or foreign laws regulating securities or other related matters, records may be disclosed to national securities associations that are registered with the Commission, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the federal banking authorities, including but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory or law enforcement agencies or organizations, or regulatory law enforcement agencies of a foreign government, or foreign securities authority.

4. To any person with whom the Commission contracts to reproduce, by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or to any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission.

5. Inclusion in reports published by the Commission pursuant to authority granted in the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)).

6. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

7. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

8. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

9. To respond to inquiries from Members of Congress, the press and the public which relate to specific matters that the Commission has investigated and to matters under the Commission's jurisdiction.

10. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47).

11. To respond to subpoenas in any litigation or other proceeding.

12. To interns, grantees, experts and contractors who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format, paper form and other media. Electronic records are stored in computerized databases. Paper and other media records are stored in locked file rooms or metal file cabinets.

RETRIEVABILITY:

The records can be retrieved by the case number or case name (as designated by the Division of Enforcement), or by the name of an involved party related to the investigation being conducted or the

administrative proceeding or civil action filed.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Enforcement Liaison and Institutional Trading, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–6628.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by other offices within the Commission; correspondence relating to litigation; pleadings in administrative proceedings; and other documents, including evidence entered in such proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–59

SYSTEM NAMES:

Office of Interpretation and Guidance Log; Office of Broker-Dealer Finances NRSRO Log; and Office of Financial Responsibility Log.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Representatives of regulated entities and their counsel, members of the public, representatives of other governmental agencies or Congress, and others who submit inquiries, information, comments, or other forms of communication to the Commission's Division of Trading and Markets' Office of Interpretation and Guidance, Office of Broker-Dealer Finances, or Office of Financial Responsibility, respectively, or who address their communications to other Division or Commission staff or offices that make a referral to, or consult with, the Division of Trading and Markets' Office of Interpretation and Guidance, Office of Broker-Dealer Finances, or Office of Financial Responsibility, respectively, or related staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Both electronic and paper records in this system may include the name of the inquirer/requester/commenter/communicant or their representative, the name of the entity if available, the subject of the inquiry/request/comment or communication, the date of the inquiry/request/comment or communication, and the staff response provided or other disposition. Paper records may include, but are not limited to, letters of inquiry/request/comment or communications, responses, and related documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 78a *et seq.* and 17 CFR 202.1 to 202.10.

PURPOSE(S):

The records are used by the staff to track and process inquiries/requests/comments and communications from members of the public, industry representatives, counsel, and others.

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 Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

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

2. To respond to inquiries from the White House, Congressional committees or offices, the General Accountability Office, General Services Administration or the National Archives and Records Administration, or others charged with monitoring the work of the Commission or conducting records management inspections.

3. To provide information to other federal or state government agencies, or securities self-regulatory organizations which have direct jurisdiction over the subject matter of the inquiry/request/comment or communication.

4. As a data source for the production of summary statistics and analytical studies in support of the function for which the records are collected and maintained or for statistics relating to personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

5. To coordinate with or assist in law enforcement and regulatory activities of the Commission and other federal, state, local, or foreign law enforcement or regulatory agencies, securities self-regulatory organizations, and foreign securities authorities.

6. To respond to a subpoena, court order, or request for discovery, in connection with any relevant litigation or proceeding where the federal securities laws are at issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

7. To provide information to a federal, state, local, or foreign government or foreign securities authority, in response to its request, in connection with civil, criminal, or other enforcement information, the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the

requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

8. A record or information in this system may be disclosed to any person with whom the Commission contracts to reproduce, by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or to any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission.

9. To interns, grantees, experts and contractors who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format, and paper form. Electronic records are stored in computerized databases. Paper records are stored in locked file rooms or file cabinets.

RETRIEVABILITY:

Records may be retrieved by any of the following: Individual name, receipt date, entity name if provided, telephone number or e-mail address if provided, the subject matter, or other indexed information.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGERS AND ADDRESSES:

Deputy Associate Director, Office of Broker-Dealer Finances, and Senior Special Counsel, Office of Interpretation and Guidance, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7561.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information collected is received from individuals primarily through telephone calls, e-mails, facsimiles, or letters to the Division of Trading and Markets or other Commission offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By the Commission.

Dated: July 16, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–17348 Filed 7–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60307; File No. SR–CBOE–2009–048]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Authority Over C2 Options Exchange, Incorporated

July 15, 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 July 2, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing concerns CBOE's authority over C2 Options Exchange, Incorporated. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change relates to CBOE's authority over C2 Options Exchange, Incorporated (''C2''), a wholly-owned subsidiary of CBOE that has filed with the Commission to register as a self-regulatory organization under Section 6 of the Exchange Act.[3] The filing is intended to clarify CBOE's intent that, upon any approval of the Form 1 application seeking to establish C2 as a registered options exchange, CBOE will be responsible for ensuring that C2 will fulfill its self-regulatory obligations and will have the resources necessary for it to do so.[4] The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities and Exchange Act Release No. 59441 (February 24, 2009), 74 FR 9322 (March 3, 2009) (File No. 10–191).

[4] The Commission notes that the first paragraph of proposed Rule 2.50 reads, in relevant part:

C2 Options Exchange, Incorporated (''C2'') will be and remain a self-regulatory organization registered under Section 6 of the Exchange Act and as such will have statutory authority and responsibility concerning, among other things, the operation of its market and regulation of its members. As the parent company with 100% controlling interest in C2, the Exchange will be responsible for ensuring that C2

Continued

policy sets forth certain principles that will guide CBOE in its fulfillment of its responsibilities as parent company of C2 with ultimate responsibility for C2's compliance with its statutory responsibilities as a self-regulatory organization should the Commission grant C2's application for registration.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'')[6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–048 and should be submitted on or before August 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17350 Filed 7–21–09; 8:45 am]

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meets its obligations as a self-regulatory organization.

[5] The Commission notes that the proposed principles set forth in proposed Rule 2.50 are as follows:

1. The Exchange will exercise its powers and its managerial influence to ensure that C2 fulfills its self-regulatory obligations by:

Directing C2 to take action necessary to effectuate its purposes and functions as a national securities exchange operating pursuant to the Exchange Act; and ensuring that C2 has and appropriately allocates such financial, technological, technical, and personnel resources as may be necessary or appropriate to meet its obligations under the Exchange Act.

2. The Exchange will refrain from taking any action with respect to C2 that, to the best of its knowledge, would impede, delay, obstruct, or conflict with efforts by C2 to carry out its self-regulatory obligations under the Exchange Act and the rules and regulations thereunder.

[6] 15 U.S.C. 78s(b)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60311; File No. SR–ISE–2009–51]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Expose All-or-None Orders on a Three-Month Pilot Basis

July 15, 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 July 9, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. On July 13, 2009, ISE filed Amendment No. 1[3] to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical, non-substantive corrections to Exhibit 1.

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to implement a broadcast message that will inform members when a non-marketable all-or-none limit order is placed on the limit order book. The text of the proposed rule change is as follows, with additions italicized:

Rule 717. Limitations on Orders

* * * * *

Supplementary Material to Rule 717

.01–.03 No Change.

.04 *A non-marketable all-or-none limit order shall be deemed ''exposed'' for the purposes of paragraphs (d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. This provision shall be in effect on a pilot basis expiring October 9, 2009.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—Pursuant to ISE Rule 717(d) and (e), Electronic Access Members must expose agency orders on the Exchange for at least one second before entering a contra-side proprietary order or a contra-side order that was solicited from a broker-dealer, or utilize one of the Exchange's execution mechanisms that have one second exposure periods built into the functionality.[4]

The Exchange operates an integrated system that consolidates all market maker quotes and orders, and automatically disseminates the best bid and offer. If a limit order is designated as all-or-none, the contingency that the order must be executed in full makes it ineligible for display in the best bid or offer. Nevertheless, such orders are maintained in the system and remain available for execution after all other trading interest at the same price has been exhausted.[5] Upon the receipt of a non-marketable all-or-none limit order, the system automatically will send a broadcast message to all members notifying them that an all-or-none order to buy or to sell a specified number of contracts at a specified price has been placed on the book.

The purpose of this rule change is to specify that a non-marketable all-or-none limit order is deemed ''exposed'' for the purposes of Rule 717(d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. Thus, all of the terms of the order will be disclosed to all members. The Exchange proposes to adopt this rule change on a three-month pilot basis expiring October 9, 2009.

The Exchange notes that the Commission has previously determined that an order can be deemed ''exposed'' even in circumstances where the actual terms of the order are not disseminated. Specifically, the Commission approved the Price Improving Order type on the Nasdaq Options Market, which is a limit order in penny increments that is rounded to the minimum price variation in the security for display purposes.[6] The Commission concluded that this order could be deemed ''exposed'' under the NOM rule that is substantively identical to the exposure requirement contained in ISE Rule 717(d) and (e). Although the actual terms of the order are not displayed to market participants, the Commission found that the ability to ''fish'' inside the displayed quote, coupled with the restriction on participants that initially submitted the Price Improving Order from trading with that order until after the exposure period had elapsed, provided a meaningful opportunity for interaction prior to the time at which the submitting participant could interact with the order. The Commission also noted that Price Improving Orders might be executed against other trading interest in the system, which will also be the case with respect to all-or-none orders on the Exchange.

The Exchange believes its broadcast message provides complete exposure of all-or-none orders, which is greater exposure than that of Price Improving Orders at NOM, as market participants will be explicitly informed when there is a non-displayed order, as well as the size and price of such order. In contrast, the only indication that there may be a Price Improving Order available for execution on NOM is an increase in size at the NOM best bid or offer (''BBO'') or a new displayed price at the NOM BBO. Since the displayed size and price change constantly, NOM market participants do not know whether there is in fact a non-displayed order available for execution. Therefore, the opportunity for NOM participants to ''fish'' for such non-displayed orders is greatly diminished. In contrast, the ISE's broadcast message will specify all of the terms of an all-or-none order.

(b) *Basis*—The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, under the proposed rule change all-or-none orders will be exposed to all members on a three-month pilot basis so that there is a greater opportunity for market participants to interact with such orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

[4] *See* ISE Rule 716(d) (Facilitation Mechanism), Rule 716(e) (Solicited Order Mechanism) and Rule 723 (Price Improvement Mechanism for Crossing Transactions).

[5] Supplementary Material .02 to ISE Rule 713.

[6] Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521(March 18, 2008).

(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[7] and Rule 19b–4(f)(6) thereunder.[8]

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.[9] However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has requested that the Commission waive the 30-day operative delay. ISE states that under the proposal, all-or-none orders will be exposed to all members so that there is a greater opportunity for market participants to interact with such orders. The Commission also notes that the proposal is on a three-month pilot basis. 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.[11]

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.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–51. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–51 and should be submitted on or before August 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17351 Filed 7–21–09; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 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 be met.

[10] *Id.*

[11] 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).

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 13, 2009, the date on which ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60306; File No. SR–FINRA–2009–035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt Its Temporary and Permanent Cease and Desist Authority on a Permanent Basis

July 14, 2009.

On May 18, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the 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 adopt its rules regarding the issuance of issue temporary and permanent cease and desist orders on a permanent basis. The proposal was published for comment in the **Federal Register** on June 9, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Since May 2003, pursuant to a pilot program approved by the Commission[4] and subsequent extensions,[5] FINRA has had the authority to issue temporary cease and desist orders (''TCDOs'');[6] impose permanent cease and desist orders as a remedy in disciplinary cases; and enforce cease and desist orders. FINRA proposed to make the existing pilot program permanent.[7]

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60028 (June 2, 2009), 74 FR 27364 (June 9, 2009) (''Notice'').

[4] *See* Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548 (June 4, 2003) (Order Approving File No. SR–NASD–98–80).

[5] The extensions were filed for immediate effectiveness and were therefore not approved by the Commission. *See* Securities Exchange Act Release No. 51860 (June 16, 2005), 70 FR 36427 (June 23, 2005) (SR–NASD–2005–061); Securities Exchange Act Release No. 55819 (May 25, 2007), 72 FR 30895 (June 4, 2007) (SR–NASD–2007–033); and Securities Exchange Act Release No. 60035 (June 3, 2009), 74 FR 27360 (June 9, 2009) (SR–FINRA–2009–034).

[6] A TCDO is a preliminary order issued in connection with an underlying disciplinary proceeding that has been initiated or will be initiated immediately.

[7] The rule filing does not make any substantive changes to the existing pilot program.

a national securities association.[8] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things that FINRA'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 Commission also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(7) of the Act,[10] which provides that FINRA members, or persons associated with its members, must be appropriately disciplined for violations of any provisions of the Act or FINRA's rules.

The Commission believes that making the pilot program permanent will provide FINRA with a mechanism to take action in certain situations against a member or an associated person that is alleged to have engaged, or is engaging, in conduct that violates Commission, FINRA, or NASD rules, when such intervention is necessary in order to prevent likely significant dissipation or conversion of assets or other significant harm to investors before the underlying disciplinary proceeding can be completed. At the same time, the Commission believes that FINRA's cease and desist provisions contain sufficient procedural protections to ensure that respondents have the opportunity for a fair hearing and, if applicable, review thereof. When it first sought cease and desist authority in 2003, FINRA said that it would use the authority sparingly and has, in fact, only used its authority once for a TCDO and once for a permanent cease and desist order.[11] FINRA stated in its Notice that if the proposal were adopted on a permanent basis, it would continue to use its cease and desist authority judiciously. The Commission expects that FINRA will continue to use this authority in an appropriate manner. The Commission believes it is reasonable and consistent with the Act for FINRA to adopt the cease and desist rules permanently to enable it to stop persons from engaging in securities transactions or conduct affecting the marketplace, in alleged violation of established rules, which is likely to cause harm to investors or would adversely affect the public interest if not addressed expeditiously.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2009–035), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17349 Filed 7–21–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 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).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78*o*–3(b)(7).

[11] *See* Notice for a more detailed description of the matter.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60313; File No. SR–BATS–2009–023]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

July 15, 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 July 9, 2009, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify BATS Rule 15.1, entitled ''Authority to Prescribe Dues, Fees, Assessments and Other Charges,'' effective immediately.

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 proposes to modify BATS Rule 15.1 to adopt new paragraph (d), which will allow the Exchange to pass on certain, specific fees that it is charged by the company that operates the data center where the Exchange's System[5] is located, as described in further detail below.

Exchange Members wishing to co-locate their trading hardware to the Exchange's System can do so by leasing space directly from the company that owns the data center. The Exchange has no involvement in determining the terms of any fees paid by the Member to lease co-location space and does not receive any proceeds from such fee. Certain Members of the Exchange maintain a co-location relationship with another Trading Center's[6] system that is located in the same data center as the Exchange. To co-locate to the Exchange, rather than leasing additional space near the Exchange's System, some Members choose instead to simply cross-connect their existing trading hardware from the space near another Trading Center's system to the Exchange's System. In such cases, the company that owns the data center charges the Exchange a monthly cross-connection fee. Pursuant to the proposed rule the Exchange will pass this cross connection fee on, in full, to the applicable Member.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''System'' is defined in BATS Rule 1.5(aa).

[6] The term ''Trading Center'' is defined in BATS Rule 2.11.

rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that in the current, competitive market environment, market participants can connect to numerous competing venues in numerous different ways, and that the Exchange currently does not charge any direct fees for connecting to the Exchange. In addition, the fees applied through the proposed rule will not result in any direct revenue for the Exchange, but rather, are a pass-through of fees charged to the Exchange as a result of certain Member's connections to the Exchange.

B. Self-Regulatory Organization's Statement on 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

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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–BATS–2009–023 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–BATS–2009–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2009–023 and should be submitted on or before August 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17352 Filed 7–21–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60315; File No. SR–MSRB–2009–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Additional Voluntary Submissions by Issuers to the MSRB's Electronic Municipal Market Access System (EMMA®)

July 15, 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 July 14, 2009, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB has filed with the Commission a proposed rule change to amend the primary market and continuing disclosure services of the Electronic Municipal Market Access system (''EMMA'') to permit issuers and their designated agents to submit preliminary official statements and other related pre-sale documents, official statements and advance refunding documents, as well as information relating to the preparation and submission of audited financial statements and annual financial information and links to other disclosure information. The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

announced no later than sixty (60) days prior to the effective date.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB'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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of amendments to the EMMA primary market disclosure service to permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of official statements, preliminary official statements and related pre-sale documents, and advance refunding documents (collectively, ''primary market documents'').[3] Pre-sale documents other than a preliminary official statement (including but not limited to notices of sale or supplemental disclosures) would be accepted only if accompanied or preceded by the preliminary official statement.[4] An issuer seeking to make submissions of primary market documents to the EMMA primary market disclosure service would use the same accounts established with respect to submissions of continuing disclosure documents to the EMMA continuing disclosure service, subject to additional verification procedures to affirmatively establish the account holder's authority to act on behalf of the issuer in connection with such primary market disclosure submissions.

Submissions of primary market documents by issuers and their designated agents will be accepted on a voluntary basis if, at the time of submission, they are accompanied by information necessary to accurately identify: (i) The category of document being submitted; (ii) the issues or specific securities to which such document is related; and (iii) in the case of an advance refunding document, the specific securities being refunded pursuant thereto. The primary market documents and related indexing information would be displayed on the EMMA Web portal and also would be included in EMMA's primary market disclosure subscription service.

The proposed rule change also would amend the EMMA continuing disclosure service to permit issuers, obligated persons and their agents to make voluntary submissions to the continuing disclosure service of additional categories of disclosures, as well as information about their continuing disclosure undertakings. Such additional continuing disclosures and related indexing information would be displayed on the EMMA Web portal and also would be included in EMMA's continuing disclosure subscription service. Such additional items are:

- Issuer's or obligated person's undertaking to prepare audited financial statements pursuant to generally accepted accounting principles (''GAAP'') as established by the Governmental Accounting Standards Board (''GASB''), as described below (the ''GASB–GAAP undertaking'');
- Issuer's or obligated persons' undertaking to submit annual financial information to EMMA within 120 calendar days after the end of the fiscal year, as described below (the ''annual filing undertaking'');
- Certificate of Achievement for Excellence in Financial Reporting awarded by the Government Finance Officers Association (''GFOA'') in connection with the preparation of a Comprehensive Annual Financial Report (''CAFR'') of an issuer (''GFOA–CAFR Certificate'');[5] and
- Uniform resource locator (URL) of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information.

The GASB–GAAP undertaking would consist of a voluntary undertaking by an issuer or obligated person (in the case of an obligated person that is a state or local governmental entity), either at the time of a primary offering or at any time thereafter, that the issuer or obligated person will prepare its audited financial statements in accordance with GAAP as established by GASB. The GASB–GAAP undertaking would assist investors and other market participants in understanding how audited financial statements were prepared. The fact that an issuer or obligated person has entered into a GASB–GAAP undertaking would be prominently disclosed on the EMMA Web portal as a distinctive characteristic of the securities to which such undertaking applies. If an issuer or obligated person that has made a GASB–GAAP undertaking later rescinds such undertaking, the issuer or obligated persons would be able to disclose such action through EMMA. The MSRB would not confirm the accuracy of any GASB–GAAP undertaking and would not review or confirm the conformity of submitted audited financial statements to GASB–GAAP.

The annual filing undertaking would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person, as appropriate, will submit to EMMA its annual financial information as contemplated under Rule 15c2–12 of the Act by no later than 120 calendar days after the end of such issuer's or obligated person's fiscal year.[6] The annual filing undertaking would assist investors and other market participants in understanding when the annual financial information is expected to be available in the future. The fact that an issuer or obligated person has entered into an annual filing undertaking would be prominently disclosed on the EMMA Web portal as a distinctive characteristic of the securities to which such undertaking applies. If an issuer or obligated person that has made an annual filing undertaking later rescinds such undertaking, the issuer or obligated person would be able to disclose such action through EMMA.

[3] Obligated persons would be permitted to submit primary market documents through the EMMA primary market disclosure service only if designated as an agent by the issuer.

[4] The MSRB believes that posting of such pre-sale documents without the related disclosure information provided in a preliminary official statement would be inconsistent with the core disclosure purposes of EMMA.

[5] The GFOA–CAFR Certificate is widely viewed as indicative of positive achievement in financial reporting by state and local governments. The MSRB would consider adding in the future additional voluntary disclosures of other widely accepted, merit-based and independently bestowed distinctions with respect to financial or other disclosures by issuers or obligated persons.

[6] Under the Act, smaller public reporting companies, as non-accelerated filers, generally are required to file their annual reports on Form 10–K with the Commission within 90 days after the end of their fiscal year. The longer 120-day period included in the voluntary annual filing undertaking of the proposed rule change is designed to accommodate additional steps that state and local governments often must take—under state law, pursuant to their own requirements, or otherwise—in completing the work necessary to prepare their annual financial information as contemplated under Exchange Act Rule 15c2–12.

The MSRB would not review or confirm the compliance of an issuer or obligated person with its annual filing undertaking.

The GFOA awards the GFOA–CAFR Certificate to a government if, based on a review process, its CAFR substantially complies with both GAAP and GFOA's CAFR program policy. According to current GFOA eligibility requirements, financial reports must include all funds and component units of the governmental entity, in accordance with GAAP, in order to be considered a CAFR. The GFOA–CAFR Certificate would assist investors and other market participants in assessments of information provided in an issuer's CAFR. If an issuer submits a copy of the GFOA–CAFR Certificate to EMMA, the EMMA Web portal would prominently disclose the issuer's receipt of a GFOA–CAFR Certificate as a distinctive characteristic of the applicable securities. The MSRB would not confirm the validity of a GFOA–CAFR Certificate submitted to EMMA.

Finally, a URL of an issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information would provide investors with an additional avenue for obtaining further financial, operating or other investment-related information about such issuer or obligated person.

The GASB–GAAP undertaking and annual filing undertaking could be included within the continuing disclosure undertaking entered into consistent with Exchange Act Rule 15c2–12 or could be made in a separate agreement. Issuers and obligated persons would indicate the existence of such an undertaking through a data input election on EMMA. The URL of an issuer's or obligated person's investor relations or other repository of financial/operating information also could be entered through a text/data input field on EMMA. No document would be required to be submitted to EMMA in connection with the GASB–GAAP undertaking and annual filing undertaking or the issuer/obligated person URL. The MSRB would include an explanation of the GASB–GAAP undertaking, annual filing undertaking and GFOA–CAFR Certificate on the EMMA Web portal.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[7] which provides that the MSRB's rules shall:

> 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.

The MSRB believes that the proposed rule change is consistent with the Act in that it serves to remove impediments to and helps perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. Voluntary dissemination of preliminary official statements through EMMA, particularly if made available prior to the sale of a primary offering to the underwriters, would provide timely access by investors and other market participants to key information useful in making an investment decision in a manner that is consistent with the MSRB's statutory authority. The GFOA–CAFR Certificate would assist investors and other market participants in assessments of information provided in an issuer's CAFR, while the GASB–GAAP undertaking would assist understanding of how such information was prepared and the annual filing undertaking would assist understanding of when such information is expected to be available in the future. A URL provided by an issuer or obligated person would provide investors with an additional avenue for obtaining further financial, operating or other investment-related information about such issuer or obligated person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The additional items of information submitted by issuers and obligated persons to the EMMA system for public dissemination would be available to all persons simultaneously. In addition to making such information available for free on the EMMA Web portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-discriminatory basis. Further, the proposed rule change would apply equally to all issuers and obligated persons.

The MSRB does not believe that making the additional items of information to be included in the EMMA continuing disclosure service available to the public would compete with other information providers and, to the extent other information providers were to seek to make such information available to the public, such providers could obtain the information from the MSRB through the subscription service on an equal and non-discriminatory basis. Further, the MSRB does not believe that allowing issuers to submit documents to the EMMA primary market disclosure service would create a burden on or compete inappropriately with any other information providers to which such documents may also be provided and notes that other information providers would be able to obtain the information from the MSRB through the subscription service on an equal and non-discriminatory basis.

The proposed rule change also would not impose any additional burdens on competition among issuers of municipal securities since the voluntary submissions provided for under the proposed rule change may be made by any issuer on an equal and non-discriminatory basis. Issuers are not required to be members of the GFOA in order to be eligible for the GFOA–CAFR Certificate. Although a fee is assessed for the necessary review by the GFOA to qualify for the GFOA–CAFR Certificate, the GFOA has established a sliding fee scale based on revenues that it views as addressing affordability for small issuers. Some issuers may choose not to apply for the GFOA–CAFR Certificate based on the fees assessed or other considerations. However, the proposed rule change would provide for disclosure of the additional voluntary items if an issuer elects to make such disclosures.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change. Therefore, no comments were received with regard to the proposed additional items of disclosure under the EMMA continuing disclosure service. However, several commentators provided comments to the MSRB with respect to the submission of preliminary official statements to EMMA in response to a series of notices published by the MSRB seeking comment on the establishment of EMMA for purposes of official statement dissemination.[8]

[7] 15 U.S.C. 78o–4(b)(2)(C).

[8] MSRB Notice 2006–19 (July 27, 2006) (the ''Concept Release''); MSRB Notice 2007–5 (January 25, 2007) (the ''January 2007 Notice''). Comments

SIFMA,[9] along with AMS, DPC, Ipreo, NABL, TRB, UMB and Zions, supported the concept of voluntary submissions of preliminary official statements. DPC and AGFS suggested that the MSRB explore making the submission of preliminary official statements mandatory, while SIFMA, AMS and NABL emphasized that preliminary official statement submissions should not be made mandatory. The MSRB believes that there is considerable value in providing a means for centralized access to preliminary official statements at or prior to the time of trade and in sufficient time to make use of the information in coming to an investment decision. However, the MSRB is precluded from mandating pre-sale submission of preliminary official statements pursuant to Section 15B(d)(1) of the Act. In its filing with the Commission to establish the EMMA primary market disclosure service, the MSRB stated that it expected to provide the opportunity for voluntary submissions of and access to preliminary official statements through EMMA, consistent with the MSRB's statutory authority, pursuant to a future filing with the Commission.[10] The proposed rule change would permit such voluntary submissions of preliminary official statements.

SIFMA and DPC noted the importance of ensuring version control where both preliminary official statements and official statements are made available (as well as in handling ''stickers'' to official statements), suggesting that the MSRB include a mechanism for notification to the public when the final official statement is posted in cases where a preliminary official statement has previously been submitted. DPC suggested that preliminary official statements be deleted when final official statements are submitted, while NABL suggested that underwriters be permitted to request that the preliminary official statement be removed from the centralized electronic system once the ''timeliness of a POS has ended,'' noting that its continued availability may confuse investors. However, SIFMA opposed the removal of the preliminary official statement.

The MSRB notes that the current operation of the EMMA Web portal provides processes that address each of these suggestions. Under current Rule G–32, preliminary official statements, if available, are required to be submitted by the underwriter by closing solely in the circumstance where an official statement is not being prepared by the issuer or if the official statement is not available for submission to EMMA by the closing. Once the official statement is provided by the underwriter, the preliminary official statement generally is moved to a document archive that is accessible through the EMMA portal directly from the page where the link to the official statement is provided, thereby distinguishing the final official statement from the preliminary official statement while maintaining public access for those wishing to refer back to the preliminary official statement. Users of the EMMA portal are able to request to receive e-mail notifications for updates to the disclosure document for a specific security, which applies to the situation where an official statement is submitted to EMMA following an initial submission of the preliminary official statement.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

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–MSRB–2009–10 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–MSRB–2009–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2009–10 and should be submitted on or before August 12, 2009.

relating to preliminary official statement submissions were received in response to the Concept Release from American Government Financial Services Company (''AGFS''), TRB Associates (''TRB''), UMB Bank, N.A. (''UMB''), and Zions Bank Public Finance (''Zions''). Comments relating to preliminary official statement submissions were received in response to the January 2007 Notice from American Municipal Securities, Inc. (''AMS''), DPC DATA Inc. (''DPC''), Ipreo Holdings LLC (''Ipreo''), National Association of Bond Lawyers (''NABL''), and Securities Industry and Financial Markets Association (''SIFMA'').

[9] Bear Stearns & Co., Inc. and Griffin, Kubik, Stephens & Thompson, Inc. stated that they participated in the formulation of SIFMA's comments on the January 2007 Notice and fully supported SIFMA's positions.

[10] *See* Securities Exchange Act Release No. 59636 (March 27, 2009), 74 FR 15190 (April 2, 2009) (File No. SR–MSRB–2009–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17354 Filed 7–21–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60312; File No. SR–NYSE–2009–70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending Until August 1, 2009 the Operation of Interim NYSE Rule 128, Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions

July 15, 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 July 15, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE has designated the proposed rule change as constituting a 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, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until August 1, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend until August 1, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,[4] the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.[5] On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008[6] in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008,[7] the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009 in order to consider integrating similar standards into the amendment to Rule 128. On January 9, 2009,[8] the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009[9] to finalize review of NYSE Arca's proposed amended CEE rule, which included marketwide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).[10] The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included marketwide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009[11] to finalize review of NYSE Arca's proposed amended CEE rule.[12]

The Exchange anticipates finalizing proposed rule text of its clearly erroneous execution rule shortly, and is, therefore, requesting to extend the operation of interim Rule 128 until August 1, 2009. Prior to August 1, 2009,

[11] 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] *See* Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR–NYSE–2008–09).

[5] *See* Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR–NASDAQ–2007–001).

[6] *See* Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR–NYSE–2008–63).

[7] *See* Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR–NYSE–2008–99).

[8] *See* Securities Exchange Act Release No. 59255 (January 15, 2009) 74 FR 4496 (January 26, 2009) (SR–NYSE–2009–02).

[9] *See* Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR–NYSE–2009–26).

[10] *See* Securities Exchange Act Release No. 59838 (April 28, 2009) 74 FR 20767 (May 5, 2009) (SR–NYSEArca–2009–36) (*See* NYSE Arca Rule 7.10).

[11] *See* Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR–NYSE–2009–26).

[12] *See* Securities Exchange Act Release No. 60131 (June 17, 2009) 74 FR 30196 (June 24, 2009) (SR–NYSEArca–2009–57).

the Exchange intends to formally file a 19b–4 rule change amending interim Rule 128.

2. Statutory Basis

The basis under the Act [13] for this proposed rule change is the requirement under Section 6(b)(5) [14] that an Exchange have rules that are designed 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.

As articulated more fully in item 3(a) [sic] above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay [19] is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–70. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–70 and should be submitted on or before August 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17371 Filed 7–21–09; 8:45 am]

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[13] 15 U.S.C. 78f(a).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60314; File No. SR–MSRB–2009–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–32, on Disclosures in Connection With Primary Offerings, Form G–32, and the Primary Market Disclosure and Primary Market Subscription Services of the MSRB's Electronic Municipal Market Access System (EMMA®)

July 15, 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 July 14, 2009, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB has filed with the Commission a proposed rule change to require brokers, dealers and municipal securities dealers (''dealers'') acting as underwriters, placement agents or remarketing agents for primary offerings of municipal securities (''underwriters'') to provide to the Electronic Municipal Market Access system (''EMMA'') and to make available on the EMMA Web portal and through the EMMA primary market subscription service, information about whether the issuer or other obligated person has undertaken to provide continuing disclosures, the identity of any obligated persons other than the issuer, and the timing by which such issuers or obligated persons have agreed to provide annual financial and operating data. The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB'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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of amendments to Rule G–32 and Form G–32 to require underwriters of primary offerings of municipal securities to submit to the MSRB's EMMA system, as part of their primary offering submission obligation under Rule G–32(b), certain key items of information relating to continuing disclosure undertakings made by issuers and other obligated persons in connection with such primary offerings. These items of information would be made available to the public through the EMMA Web portal and are intended to inform investors in advance whether continuing disclosures will be made available with respect to a particular municipal security, from and about whom such continuing disclosures are expected to be made, and the timing by which such disclosures should be made available. The items of information regarding continuing disclosure undertakings to be provided by underwriters through Form G–32 would include:

- Whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2–12;
- The name of any obligated person, other than the issuer of the municipal securities, that has or will undertake, or is otherwise expected to provide, continuing disclosure pursuant to the continuing disclosure undertaking;
- The date or dates identified in the continuing disclosure undertaking, pursuant to Securities Exchange Act Rule 15c2–12(b)(5)(ii)(C) or otherwise, by which annual financial information is expected to be submitted each year by the issuer and/or any obligated persons to the EMMA system; and
- Contact information for a representative of the issuer and/or any obligated persons for purposes of establishing continuing disclosure submission accounts for such issuer and/or obligated persons in connection with their submissions to the EMMA system.

The underwriter would be required to provide information regarding whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2–12 by no later than the date of first execution of transactions in municipal securities sold in the primary offering. The remaining items of information would be required to be provided by the closing date of the primary offering. The name or names of obligated persons to be provided would be of the entity acting as an obligated person, not an individual at such entity, unless the obligated person is in fact an individual. The date by which the issuer or obligated person has undertaken to submit annual financial information would be submitted as a specific month and day, accurate as of the closing of the primary offering.[3] If annual financial information is expected to be submitted by more than one entity and such information is expected to be submitted on different dates, each such date provided would be matched to the appropriate issuer and/or obligated person. Underwriters currently are able to provide contact information for issuer or obligated person representatives with respect to current and past primary offerings through EMMA on a voluntary basis. The proposed rule change would require that such information be provided as part of the underwriter's Form G–32 submission process for new primary offerings.

Until closing, the underwriter would be required to update promptly any information it has previously provided on Form G–32 which may have changed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, EMMA would not accept a submission of information stating that the annual financial information will be provided within a particular number of days after the end of the fiscal year since investors and other market participants may not have ready access to information about the issuer or obligated person's fiscal year. Simultaneous with this filing, the MSRB is filing with the Commission a proposed rule change that would amend EMMA's continuing disclosure service to, among other things, allow an issuer or obligated person to publish on the public EMMA Web portal, on a voluntary basis, information about its undertaking to provide audited financial statements within 120 days after the end of the fiscal year. *See* SR–MSRB–2009–10 (July 14, 2009).

or to correct promptly any inaccuracies in such information, and would be responsible for ensuring that such information provided by it is accurate as of the closing date. So long as the underwriter has provided such information accurately as of the closing date, it would not be obligated to update the information provided if there are any subsequent changes to such information, such as additions, deletions or modifications to the identities of obligated persons or changes in the timing for providing annual financial information. Issuers and obligated persons will be able to make changes to such information through their submission accounts established in connection with EMMA's continuing disclosure service.

Information regarding whether an offering is subject to a continuing disclosure undertaking, the names of obligated persons and the dates for providing annual financial information would be displayed on the EMMA Web portal and also would be included in EMMA's primary market disclosure subscription service.[4] These items are intended to provide investors and others with information on the expected availability of disclosures following the initial issuance of the securities. In particular, users of the EMMA Web portal would be able to determine which obligated persons are expected to submit annual financial information, audited financial statements and material event notices on an on-going basis, as well as the date each year by which they should expect to have access to the annual financial information.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[5] which provides that the MSRB's rules shall:

> 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.

The MSRB believes that the proposed rule change is consistent with the Act in that it serves to remove impediments to and helps perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The information that underwriters would provide and that would be made available to the public with regard to the continuing disclosure undertakings of issuers and obligated persons would assist investors to understand whether and when they should expect to have access to key continuing disclosure information in the future. Investors and other market participants would be able to include such assessment of on-going access to information in the mix of factors upon which they may evaluate their investment decisions. The issuer and obligated person contact information would assist such persons to establish EMMA submission accounts and thereby promote more efficient and timely submissions of continuing disclosure documents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The additional items of information submitted by underwriters to the EMMA system for public dissemination would be available to all persons simultaneously. In addition to making such information available for free on the EMMA Web portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-discriminatory basis. Further, the proposed rule change would apply equally to all underwriters. Specifically, the addition of these items of information to the existing EMMA primary market submission process would not compete with other information providers and, to the extent other information providers were to seek to make such information available to the public, such providers could obtain the information from the MSRB through the subscription service on an equal and non-discriminatory basis. The proposed rule change also would not impose any additional burdens on competition among issuers of municipal securities since the proposed rule change does not impose any direct or indirect obligations on issuers but merely provides for disclosure of information by underwriters regarding continuing disclosure undertakings entered into under Exchange Act Rule 15c2–12.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In a notice published by the MSRB on January 31, 2008, the MSRB described its plan for implementing a continuing disclosure service that would be integrated into other services to be offered through EMMA.[6] In particular, the MSRB stated its plan to institute the continuing disclosure service to accept submissions of continuing disclosure information in a designated electronic format directly from issuers, obligated persons and their designated agents acting on their behalf. Among other things, the notice sought comment on whether underwriters for new issues should be required to submit to the MSRB information about (i) Whether a continuing disclosure undertaking exists, (ii) the identity of any obligated persons other than the issuer, and (iii) the date identified in the continuing disclosure undertaking by which annual financial information is expected to be disseminated. Such information would be provided by underwriters through the same information submission process as, and simultaneously with, the information to be provided in connection with official statement submissions. The notice also asked whether other items of information should be required, such as the identity of designated agents for submitting continuing disclosure or the criteria for identifying obligated persons subject to the continuing disclosure obligations.

Four commentators provided comments on the issue of underwriter submission of information relating to the issuer's continuing disclosure obligations.[7] First Southwest supported requiring the submission of the three items of information identified in the notice and stated that no other

[4] Contact information for issuers and obligated persons provided by underwriters would be used by the MSRB solely for purposes of inviting such issuers and obligated persons to establish submission accounts with the MSRB and will not be displayed on the EMMA Web portal and will not be included in the primary market disclosure subscription service.

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] *See* MSRB Notice 2008–05 (January 31, 2008).

[7] *See* letters from Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, Stephen M. Fillebrown, Director of Research, Investor Relations and Compliance, NJ Health Care Facilities Financing Authority, and Charles A. Samuels and Meghan B. Burke, Mintz Levin Cohn Ferris Glovsky and Popeo PC, on behalf of National Association of Health and Educational Facilities Finance Authorities (''NAHEFFA''), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated March 3, 2008; Jack Addams, Managing Director, First Southwest Company (''First Southwest''), to Mr. Lanza, dated February 25, 2008; J. Foster Clark, President, National Association of Bond Lawyers (''NABL''), to Mr. Lanza, dated February 25, 2008; Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), to Mr. Lanza, dated February 25, 2008.

information in addition to the three items listed in the notice should be required. NABL, NAHEFFA and SIFMA provided comments on the items relating to identification of obligated persons and the date on which annual financial information is expected to be disseminated.

With respect to identification of obligated persons, NABL and SIFMA noted that only those obligated persons for whom financial or operating data is provided in the official statement are relevant. NABL suggested only requiring underwriters ''to identify those persons expressly specified in the continuing disclosure undertaking who will be required to make continuing disclosure filings or to state that such persons will be determined by the functional descriptions contained in the continuing disclosure undertaking.'' SIFMA stated that a requirement for the underwriter to provide such information is ''unnecessarily complicated since the official statement itself, which is on the portal, has a summary paragraph stating who will be filing continuing disclosure and where it will be filed.''

The proposed rule change would require that underwriters provide the name of any obligated person (other than the issuer) that would be providing continuing disclosures pursuant to the continuing disclosure undertaking, rather than all obligated persons regardless of whether such obligated persons will be providing disclosure information. The MSRB believes that collecting the identity of obligated persons in a fielded manner that permits automated indexing and search functions is an important feature that would make the EMMA Web portal considerably more useful for users. Such indexed information would assist EMMA Web users in finding some or all of the offerings for a particular obligated person, thereby allowing the user to review the continuing disclosure undertakings that more fully spell out how the continuing disclosure obligations will be fulfilled.

With respect to the expected date of filing of annual financial information, NABL and SIFMA questioned the value of providing this information. NABL noted that the information is already provided in the official statement's description of the continuing disclosure undertaking and can become confusing if several obligated persons are required to file annual filings on different dates, while SIFMA noted that the information can be vague, often based on a stated period of time following the end of a fiscal year, and will become readily apparent based on the pattern of posting over time. NAHEFFA sought clarification of the purpose for requiring this date and requested that the data entry be flexible enough to reflect a deadline measured from the end of a fiscal year or other milepost, rather than a date certain.

The MSRB believes that there is considerable value in providing the expected date of submission of annual financial information in a manner that is extracted from the official statement. The MSRB would require that such information be provided in the form of a specific month and day. This would permit investors and the general public to readily identify when such disclosures should become available from each issuer or obligated person expected to provide the annual filings. Issuers and obligated persons would be able to update the timing requirement, as well as the identity of any obligated persons, through EMMA as appropriate.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

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–MSRB–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–MSRB–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 the MSRB. 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–MSRB–2009–09 and should be submitted on or before August 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17353 Filed 7–21–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6706]

Culturally Significant Objects Imported for Exhibition Determinations: ''Roaring Tigers and Leaping Carp: Decoding the Symbolic Language of Chinese Animal Painting''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: ''Roaring Tigers and Leaping Carp: Decoding the Symbolic Language of Chinese Animal Painting,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Cincinnati Art Museum, Cincinnati, OH, from on or about October 9, 2009, until on or about January 3, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 14, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–17464 Filed 7–21–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number: RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 16, 2009 (74 FR 11177–11178).

DATES: Written comments should be submitted by August 21, 2009.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E34–409, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or E–MAIL *bernard.stankus@dot.gov*.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0016

Title: Report of Extension of Credit to Political Candidates—Form 183 14 CFR Part 374a.

Form No.: 183.

Type of Review: Extension of a currently approved collection.

Respondents: Certificated air carriers.

Number of Respondents: 2 (Monthly Average).

Number of Responses: 24.

Estimated Time per Response: 1 hour.

Total Annual Burden: 24 hours.

Needs and Uses: The Department uses this form as the means to fulfill its obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (*e.g.* airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 USC 3501), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, transmission of both respondent's identity and its data to the Federal Elections Commission.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 16, 2009.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. E9–17393 Filed 7–21–09; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0063]

Ferrari S.p.A and Ferrari North America, Inc.; Grant of Application for Extension of a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for extension of a temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: This notice grants the Ferrari S.p.A and Ferrari North America, Inc. application for extension of a temporary exemption from some requirements of FMVSS No. 208, *Occupant Crash Protection*. The exemption applies to the F430 vehicle line. In accordance with 49 CFR part 555, the basis for the grant is that compliance would cause substantial economic hardship to a low-volume manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety. The exemption is effective through August 31, 2009.

In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published

a notice of receipt of the application and asked for public comments.[1]

DATES: The exemption from the applicable FMVSSs is effective from July 22, 2009 through August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Ari Scott, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–326, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820; e-mail: *ari.scott@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers
II. Overview and Statutory Background of Petition for Economic Hardship
III. Petition of Ferrari
IV. Federal Register Notice of November 26, 2007
V. NHTSA Analysis of Petition
VI. Agency Decision

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.''[2] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years earlier. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented. As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency.

In a petition submitted on July 26, 2007,[3] Ferrari S.p.A and Ferrari North America, Inc. (''Ferrari'') requested an extension of the temporary exemption that it previously received,[4] exempting it from certain advanced air bag provisions of FMVSS No. 208 with respect to the Ferrari F430 vehicles. Specifically, Ferrari is requesting an extension of an exemption from the requirements in S19, S21, and S23 of the standard, which establish requirements using infant, three-year-old child, and six-year-old child dummies, respectively. Ferrari requested a one-year extension through August 31, 2009. The rationale for this extension is that while Ferrari had originally anticipated launching a redesigned vehicle (that would be fully compliant) in 2008, delays have pushed that date back to 2009, and the company would like to extend its existing exemption to allow it to continue to sell the F430 until the compliant successor vehicle is launched.

II. Overview and Statutory Background of Petition for Economic Hardship

In accordance with 49 U.S.C. 20112 and the procedures in 49 CFR Part 555, Ferrari has petitioned the agency for extension of a temporary exemption from certain advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, for the F430 vehicles. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a ''temporary basis,''[5] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith efforts to comply with the regulation, the public interest, and consistency with the Safety Act, generally, as well as other such matters provided in the statute.

III. Petition of Ferrari

Background. NHTSA notes that a manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (*15 U.S.C. 1410(d)(1)*). While Fiat S.p.A., a major vehicle

[1] To view the application or public comments, please go to: *http://www.regulations.gov* (Docket No. NHTSA–2007–0020).

[2] *See* 65 FR 30680 (May 12, 2000).

[3] The petition is available at *http://www.regulations.gov*, Docket No. NHTSA–2007–0020.

[4] The original petition of Ferrari is available at *http://www.regulations.gov*, Docket No. NHTSA–2005–23093. Furthermore, the notice granting that petition, Ferrari S.p.A and Ferrari North America, Inc. Grant of Application for a Temporary Exemption From S14.2 of Federal Motor Vehicle Safety Standard No. 208, was published at 71 FR 29389, May 22, 2006.

[5] 49 U.S.C 30113(b)(1).

manufacturer, holds a majority interest in Ferrari, NHTSA still considers that Ferrari's production will not exceed that number. Consistent with past determinations, NHTSA has determined that Fiat's interest in Ferrari does not result in the production threshold being exceeded [6] (see 70 FR 71372). In its current petition, Ferrari states that during the twelve month period from June 1, 2006 to June 1, 2007, Ferrari's worldwide production of motor vehicles was 6,249. If the requested exemption is granted, Ferrari anticipates that its production during the extension year of the exemption will be approximately 7,200 vehicles.

In response to Ferrari's original petition for exemption in 2005,[7] the agency stated that the Ferrari F430 bears no resemblance to any motor vehicle designed or manufactured by Fiat, and that the agency understood that the F430 was designed and engineered without assistance from Fiat. Further, the agency stated that such assistance as Ferrari may receive from Fiat relating to use of test facilities and the like is an arms length transaction for which Ferrari pays Fiat. Therefore, NHTSA concluded that Fiat was not a manufacturer of Ferrari vehicles by virtue of being a sponsor. We continue to believe this is the case.

Requested exemption. Ferrari is requesting an extension of the temporary exemption that it previously received, exempting it from the advanced air bag provisions of FMVSS No. 208 with respect to the Ferrari F430 vehicles. Specifically, Ferrari is requesting an extension of its exemption from the requirements in S19, S21, and S23 of the Standard, which establishes requirements using infant, three-year-old child, and six-year-old child dummies, respectively. Ferrari originally planned to produce the F430 only until late 2008. Thus, Ferrari only sought and received the current exemption, which extended until August 31, 2008.[8] However, Ferrari states that unexpected developments, including the need to assure that the replacement model complies with new, more stringent European carbon dioxide and noise regulations and new requirements promulgated by the California Air Resources Board, have delayed the replacement vehicle until late 2009. Therefore, Ferrari is requesting a one year extension of the current exemption, through August 31, 2009.

The petitioner indicated that it intends to replace the F430 in 2009 with a new model, which will comply with all applicable FMVSSs. Therefore, need for the exemption is not expected to last beyond the date of the exemption.

Economic hardship. The petitioner states that the inability to sell F430 vehicles manufactured after August 31, 2008 would have severe economic consequences for Ferrari S.p.A. and Ferrari North America (FNA). Specifically, Ferrari S.p.A., while remaining a profitable enterprise, would suffer approximately $77 million in lost sales during the one year period of the extended exemption, and additional lost sales in later years. Furthermore, FNA would suffer $9 million in lost sales in 2009, and would suffer an overall loss in that year. Additionally, failure to obtain the exemption would cause an adverse financial effect through lost sales of replacement parts for several years in the future.

Good faith efforts to comply. Ferrari states that it considered alternate means of compliance, but found that compliance with the advanced air bag requirements of FMVSS No. 208 was not possible. As described in the notice of Ferrari's original petition for exemption, the F430 was originally designed in the mid-1990s as the 360 model, and was designed to comply with all of the requirements of the FMVSSs in effect at the time the 360 was originally designed. The petitioner stated that the provisions of FMVSS No. 208 established in 2000 (*65 FR 30680*; May 12, 2000; Advanced Air Bag rule) were not anticipated by Ferrari when the 360 vehicle model was designed. The F430 was introduced in 2004. Ferrari had originally intended to replace the F430 in 2008, but now anticipates the replacement model being ready in 2009.

As described in the notice of receipt of Ferrari's previous petition, Ferrari stated that it has been able to bring the F430 into compliance with all of the high-speed belted and unbelted crash test requirements of the Advanced Air Bag rule. However, it stated that it has not been able to bring the vehicle into compliance with the child out-of-position requirements (S19, S21, and S23). Ferrari also noted that despite efforts to involve numerous potential suppliers, it was unable to identify any that are willing to work with the company to develop an occupant classification system that would comply with the requirements in S19, S21, and S23. Moreover, Ferrari had stated that it was unable to reconfigure the F430 to accommodate an occupant classification system and air bag design that would comply with these requirements.

In its current request, Ferrari states that when it realized that it would need to continue production of the F430 beyond September 1, 2008, it again contacted several potential suppliers regarding the procurement of advanced air bag systems. This attempt, Ferrari states, was also unsuccessful. Additionally, Ferrari notes that since filing its initial petition, it has continued to work on compliance issues, and has been able to bring the F430 into full compliance with S25 of the standard. Paragraph S25 specifies the test requirements for using an out-of-position 5th percentile adult female dummy at the driver position.

Ferrari states that further efforts to bring the F430 vehicles into full compliance with FMVSS No. 208 during the term of the requested exemption would be futile. However, Ferrari states that it is taking steps to minimize the negative safety consequences of the exemption. First, Ferrari will continue to equip the F430 with a manual air bag on/off switch for the passenger air bag as standard equipment, in order to prevent the possibility of an air bag deployment when a child is present. Second, Ferrari will continue to offer to provide purchasers with child restraint systems designed to automatically suppress the passenger air bag when the restraint is present, at no cost.

Ferrari argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically, Ferrari argues that the public interest is served by four factors. These include: (1) Satisfying the public interest in offering consumers a wider variety of motor vehicle choices; (2) affording continued employment to the petitioner's U.S. workforce; (3) there would be minimal safety impact from granting this exemption; and (4) that it would be inequitable to prevent Ferrari from importing the F430 until 2009, when other vehicles have been granted similar exemptions.

Ferrari states that there is consumer demand in the United States for high-performance sports cars such as the F430. It argues that compliance with the advanced air bag requirements is virtually impossible for vehicles such as the F430, which was designed before the advanced air bag rule was proposed. Ferrari notes that NHTSA has, in the past, stated that it believes the public

[6] 54 FR 46321; November 2, 1989.

[7] 70 FR 71372, November 28, 2005.

[8] We note that under 49 CFR 555.8(e), ''if an application for renewal of temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal.''

interest is often served by affording consumers a wider variety of motor vehicle choices. The petitioner also states that the public interest will be served in affording continued employment to the petitioner's U.S. work force, which would be affected by the granting or denial of the exemption.

Ferrari also argues that the safety drawbacks of granting an exemption will be minimal. The F430 is designed and marketed as a high performance vehicle, and therefore would have relatively little on-road operation compared with other motor vehicles. Furthermore, the petitioner states that it is unlikely that young children would be passengers in the vehicle, and that other safety measures, such as passenger air bag on/off switches and child restraint systems, are available at no cost. In addition, in its original petition for exemption, the petitioner stated that the F430 also has a variety of passive safety features not required under the FMVSS, including seat belt pretensioners, among other systems. Thus, Ferrari argues, an exemption would have a minimal impact on safety.

Finally, the petitioner suggested that this petition is similar to other petitions for exemptions from the advanced air bag standards for similar vehicles. Specifically, Ferrari stated that NHTSA has granted exemptions to several of Ferrari's competitors that extend until at least August 31, 2009. These exemptions extend to the Lamborghini Murcielago, the Lotus Elise, the Morgan Aero 8, theYES! Roadster, and the Koenigsegg CCX.[9] Ferrari argues that it would be inequitable for the agency to deny its petition for an extension of the F430 exemption until August 31, 2009.

IV. Federal Register Notice of November 26, 2007

In the **Federal Register** of November 26, 2007 (72 FR 66028), we published a notice announcing receipt of an application from Ferrari for a temporary exemption from the advanced air bag requirements of FMVSS No. 208 for the F430. We invited public comment on Ferrari's application. We received no comments in response to this publication.

V. NHTSA Analysis of Petition

The following discussion provides our decision regarding Ferrari's temporary exemption request pertaining to the advanced air bag requirement of FMVSS No. 208.

The fundamental problem which is causing Ferrari to be unable to fully comply with the advanced air bag requirements relates to the design cycle of the vehicle. As stated in the original petition for exemption, the model at issue here, the F430, is based on the design of the model 360. This model was designed in the 1990s, before Ferrari had any reason to anticipate that FMVSS No. 208 would be amended to impose the advanced air bag requirements. Despite significant expenditures of capital and labor in pursuit of compliance,[10] Ferrari was unable to bring its vehicle into compliance (although, we note, it was able to comply with paragraph S25 of Standard No. 208). Ferrari believes that the only achievable solution to bring the F430 into compliance is a complete redesign of the vehicle, which, due to the long design cycle, is scheduled for 2009.

In its petition for renewal, Ferrari argued that the obstacle to compliance is not cost, but, rather, compliance is an impossibility. Numerous design elements, including the chassis, the interior occupant compartment case, the space behind the instrument panel, the air bags, and the seats, were designed in a manner that preclude compliance with the new requirements. The vehicle chassis has an extremely low profile and ride height that preclude the addition of any available occupant classification system, and the limited room behind the instrument panel and in the occupant compartment make it impossible to install air bags that satisfy all of the advanced air bag requirements. Additionally, there are no air bags available that Ferrari can purchase that could be installed in the F430. The compliant air bags that Ferrari uses on its 12-cylinder 612 Scaglietti and 599 GTB vehicles cannot be used in the F430 because the former vehicles have a larger occupant compartment and utilize occupant classification sensors that cannot, due to size and design, be installed on the F430.

Ferrari stated that its inability to sell the F430 in the United States after September 1, 2008 would lead to a substantial loss of sales and revenue. Ferrari projected that if it were unable to sell the F430 model in the U.S., it would realize a decrease in net profit of approximately 56 million Euros ($77,000,000, as of the time of the petition) during this period. Ferrari stated that such consequences demonstrate ''substantial economic hardship'' within the meaning of *49 U.S.C. 30113(b)(3)(B)(i).*

The petitioner cited a number of effects that would result from this hardship. A denial of the petition would have substantial effects on FNA's income in 2009 (over $9 million in lost income), leading to a pre-tax loss in that year. It would also have a negative impact on the company's sales of replacement parts for several years, as well as impact several small specialty service providers. Finally, it would have a significant effect on the network of Ferrari dealers in the United States, including a potential loss of jobs among employees of those dealerships.

Ferrari has requested that additional specific details regarding its finances and financial forecasts be afforded confidential treatment under *49 CFR 512.4,* asserting a claim for confidential information. We have determined that this information is to be afforded such treatment.

While it complies with a significant portion of the requirements of FMVSS No. 208, the petitioner has not been able to achieve full compliance despite considerable effort put to that end. As described in the notice of receipt of Ferrari's previous petition, Ferrari has been able to bring the F430 into compliance with all of the high-speed belted and unbelted crash test requirements of the Advanced Air Bag rule. However, it has still not been able to bring the vehicle into compliance with the child out-of-position requirements (S19, S21, and S23). Furthermore, despite efforts to involve numerous potential suppliers, it was unable to identify any that are willing to work with the company to develop an occupant classification system that would comply with the requirements in S19, S21, and S23. Moreover, Ferrari had stated that it was unable to reconfigure the F430 to accommodate an occupant classification system and air bag design that would comply with these requirements.

Despite the fact that it had already obtained an exemption through August 21, 2008, when Ferrari realized that it would need to continue production of the F430 beyond September 1, 2008, it again contacted several potential suppliers regarding the procurement of advanced air bag systems. This attempt, like previous efforts to induce large-scale component suppliers to design a custom advanced air bag system, was unsuccessful. Additionally, as stated previously, Ferrari notes that since filing its initial petition, it has continued to work on compliance issues, and has been able to bring the F430 into full compliance with S25 of the standard. Paragraph S25 specifies the test requirements for using an out-

[9] *See* 71 FR 52951; 71 FR 68888; and 72 FR 17609.

[10] The precise figures are provided in the confidential version of the petition.

of-position 5th percentile adult female dummy at the driver position.

NHTSA is aware that Ferrari will not be undertaking additional efforts during the term of this extension to bring the F430 vehicles into full compliance with FMVSS No. 208. Instead, the company intends to achieve full compliance with the launch of the redesigned vehicle in 2009. However, during the year of this extension, Ferrari will be taking steps to minimize the negative safety consequences of the exemption. First, Ferrari will continue to equip the F430 with a manual air bag on/off switch for the passenger air bag as standard equipment, in order to prevent the possibility of an air bag deployment when a child is present. Second, Ferrari will continue to offer to provide purchasers with child restraint systems designed to automatically suppress the passenger air bag when the restraint is present, at no cost.

As stated above, Ferrari does not intend to bring the F430 into compliance with FMVSS No. 208 during the period of this exemption. Instead, by the end of the requested extension, Ferrari will cease selling the F430.

We believe that there are a number of public interest considerations served by granting this petition. These include: (1) The general consideration of affording consumers a wider variety of motor vehicle choices; (2) the economic benefits of affording continued employment to the petitioner's U.S. work force; (3) the estimated minimal impact due to the relatively low-use nature of the vehicle and the rare use of the vehicle by young children; (4) the additional safety features of the vehicle as described by the petitioner; and (5) the petitioner's willingness to provide additional child safety features to consumers at no cost. Each of these is discussed below. We note that while no one factor is dispositive in our decision, overall, we believe that they, in combination with Ferrari's continuous efforts to meet the advanced air bag requirements for the redesigned vehicle, present a persuasive case for the current exemption to be extended one year.

As discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. We note that Ferrari is a well-established company with a small but not insignificant U.S. presence and we believe that the sales reduction would negatively affect U.S. employment. Specifically, reduction in sales would likely affect employment not only at FNA, but also at Ferrari dealers, repair specialists, and several small service providers that transport Ferrari vehicles from the port of entry to the rest of the United States.

We believe this exemption will have negligible impact on motor vehicle safety for several reasons. One reason is the limited number of vehicles affected and the fact that Ferrari vehicles, like other high-cost, high-performance sports cars, are not typically used for daily transportation. NHTSA is well aware that the yearly usage of a vehicle such as an F430 is substantially lower compared to vehicles used for everyday transportation.

Additionally, the agency examined the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) data for years 1995–2007. These data indicate that over the past 13 years, there was one severe injury in a NASS CDS case, and five fatalities in FARS cases involving the 360 Modena or the F430. None of the injured or killed occupants in these vehicles were children. Thus, there were no children involved in crashes of Ferrari 360 or F430 vehicles included in these databases, which further mitigates the safety impact of noncompliance with portions of FMVSS No. 208.

The petitioner put forth a variety of public interest considerations in its original petition for exemption. In the **Federal Register** notice granting the original petition for exemption, the agency summarized those arguments.[11] With regard to additional safety features, we noted that:

> Ferrari states that the vehicle is equipped with a variety of ''active safety'' systems beyond that required by the FMVSSs and that these systems ''significantly improve vehicle handling and enhance controllability.'' Such systems include the Manettino control system, which adjusts vehicle handling and stability to specific driving conditions; the Control Stability System, an electronic stability control system; Electro-Hydraulic Differential, a system that manages torque distribution between the two rear wheels to improve stability; Continuous Damping Control, a system that adjusts to road conditions in order to improve braking; and a ''Sky-Hook'' strategy.[12]

While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest. Specifically, we believe that these safety features will help to mitigate the safety disbenefits of not complying with all of the advanced air bag requirements.

A final factor that played into our decision to grant this exemption is that Ferrari has voluntarily included two alternative means for passenger air bag suppression for the protection of children being transported in the right front seating position, which was also discussed in the original petition for exemption and the accompanying notices. First, Ferrari has provided a manual on/off switch. This enables the passenger air bag to be manually turned off when a child is present, which will help to prevent certain air bag-induced injuries. Second, Ferrari offers a special child restraint system that automatically suppresses the passenger air bag when it is properly installed in the right front passenger seat. Ferrari offers this automatic child restraint system at no cost to the consumer, upon request. Both of these features offer passenger air bag suppression capability in the event a child needs to be transported in the right front seating position, and support our findings that this exemption will have negligible impact on motor vehicle safety.

VI. Agency Decision

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. § 30113(b)(3)(B)(i), Ferrari is granted an extension of NHTSA Temporary Exemption No. EX 06–1. The exemption shall remain until August 31, 2009 as indicated in the DATES section of this notice.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: July 16, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–17384 Filed 7–21–09; 8:45 am]

BILLING CODE 4910–59–P

[11] *See* 71 FR 29389, at 29391.

[12] According to the petitioner, the ''Skyhook'' strategy detaches the vehicle body, as a sprung mass, from what is taking place on the axles and wheels by calming the movement of the body. In addition to improved comfort, this provides for optimal control of the vehicle body at all times.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2009–0062]

The Union Pacific Railroad Company (UPRR) seeks a waiver of compliance with the *Locomotive Safety Standards,* 49 CFR 229.129(c)(10), as they pertain to the requirement to maintain a written record of the locomotive horn testing requirement described in this part, and allow the person performing the testing to utilize an electronic signature. If granted, UPRR would maintain locomotive horn testing information in a secure database until a subsequent locomotive horn test is completed and information will be made available to FRA upon request, as provided by 49 U.S.C. 20107. In place of required signatures of persons performing inspections and tests, UPRR employees would be provided a unique login identification number and a secure password to access the system and verify performance of required horn test.

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–2009–0062) 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 July 16, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–17318 Filed 7–21–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49, Code of Federal Regulations (CFR), Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2006–25862]

On October 6, 2007, FRA granted the Union Pacific Railroad Company (UP) a temporary conditional waiver from certain provisions of 49 CFR part 240 (*Qualification and Certification of Locomotive Engineers*). The regulatory relief was granted in connection with implementation of a Close Call Reporting System (C3RS) Demonstration Pilot Project involving UP's North Platt Service Unit. The C3RS Demonstration Pilot Project is sponsored by FRA's Office of Research and Development and is one of the action items included in FRA's Rail Safety Action Plan initiated in 2006. Background documentation related to the existing regulatory relief granted is available under Docket Number FRA–2006–25862, available online at *http://www.regulations.gov.*

In 2008, FRA amended 49 CFR part 218 (*Railroad Operating Practices)* to include Subpart F pertaining to handling equipment, switches, and fixed derails. In its current request, UP has asked that FRA amend the existing waiver in this docket to provide relief from certain provisions of Subpart F of Part 218. Specifically, for properly reported close call events, UP requests relief from the requirements of: 49 CFR 218.99(b)–(e), 218.101(b)–(c), 218.103(b)–(d), 218.105(b)–(d), 218.107(b)–(c), and 218.109(b)–(c).

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–2006–25862) 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 15 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 July 16, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–17317 Filed 7–21–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 670 (Sub—No. 2)]

Notice of Rail Energy Transportation Advisory Committee Vacancies

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Notice of vacancies on Federal Advisory Committee and solicitation of nominations.

SUMMARY: The Surface Transportation Board (Board), hereby gives notice of two vacancies on the Board's Rail Energy Transportation Advisory Committee (RETAC): (1) A representative of a Class II or III railroad and (2) a representative of a biofuel refiner, processor, or distributor, or biofuel feedstock grower or provider. The Board is soliciting suggestions for candidates to fill those vacancies.

DATES: Suggestions of candidates for membership on RETAC are due July 31, 2009.

ADDRESSES: Suggestions may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 670, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman at 202–245–0202. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board, created by Congress in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701–10747, 11101–11124), as well as the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901–10907) and railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323–11327).

In 2007, the Board established RETAC as a Federal advisory committee consisting of a cross-section of energy and rail industry stakeholders to provide independent, candid policy advice to the Board and to foster open, effective communication among the affected interests on issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources.

RETAC's membership is a balanced representation of interested and affected parties, consisting of not less than: 5 representatives from the Class I railroads, 3 representatives from Class II and III railroads, 3 representatives from coal producers, 5 representatives from electric utilities (including at least one rural electric cooperative and one state- or municipally-owned utility), 4 representatives from biofuel refiners, processors, or distributors, or biofuel feedstock growers or providers, and 2 representatives from private car owners, car lessors, or car manufacturers. RETAC may also include up to 3 members with relevant experience but not necessarily affiliated with one of the aforementioned industries or sectors. Members are selected by the Chairman of the Board with the concurrence of a majority of the Board. The Chairman of the Board may invite representatives from the U.S. Departments of Agriculture, Energy and Transportation and the Federal Energy Regulatory Commission to serve on RETAC in advisory capacities as *ex officio* (non-voting) members, and Board members serve as *ex officio* members of the Committee as well.

RETAC functions solely as an advisory body, in compliance with the Federal Advisory Committee Act and its implementing regulations. RETAC typically meets four times per year, at the Board's headquarters in Washington, DC. No honoraria, salaries, travel or per diem are available to members of the RETAC; however, reimbursement for travel expenses may be sought from the Board in cases of hardship.

Two vacancies currently exist for 3-year terms on RETAC beginning September 1, 2009: (1) A representative of a Class II or III railroad, and (2) a representative of a biofuel refiner, processor, or distributor, or biofuel feedstock grower or provider. Suggestions for members to fill those vacancies should be submitted in letter form, identifying the name of the candidate and the entity the candidate would represent, and a representation that the candidate is willing to serve a 3-year term as a member of the RETAC beginning in the Fall of 2009. Suggestions for candidates for membership on RETAC should be filed with the Board by July 31, 2009.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: July 16, 2009.

By the Board, Anne K. Quinlan, Acting Secretary.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–17309 Filed 7–21–09; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Wednesday,
July 22, 2009

Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–STD–0013]

RIN 1904–AB83

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is adopting amended energy conservation standards for commercial packaged boilers and adopting a new energy conservation standard for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h at the efficiency levels specified in the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)/Illuminating Engineering Society of North America (IESNA) Standard 90.1–2007. DOE has determined that the ASHRAE Standard 90.1–2007 efficiency levels for commercial packaged boilers are more stringent than the existing Federal energy conservation standards and will result in economic and energy savings compared to existing energy conservation standards. Furthermore, DOE has concluded that clear and convincing evidence does not exist, as would justify more-stringent standard levels than the efficiency levels in ASHRAE Standard 90.1–2007. In addition, DOE is adopting related amendments to its test procedures for commercial packaged boilers.

DATES: This rule is effective September 21, 2009. The standards for commercial packaged boilers established in this final rule will apply starting on March 2, 2012. The standards for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h established in this final rule will apply starting on January 10, 2011. The incorporation by reference of certain publications listed in this final rule was approved by the Director of the Federal Register on September 21, 2009.

ADDRESSES: 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. You may also obtain copies of the final rule in this proceeding, related documents (*e.g.,* the notice of proposed rulemaking and technical support document DOE used to reassess whether to adopt certain efficiency levels in ASHRAE Standard 90.1), draft analyses, public meeting materials, and related test procedure documents from the Office of Energy Efficiency and Renewable Energy's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_docs_meeting.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Mr. Michael Kido or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–8145 or (202) 586–5827. E-mail: *Michael.Kido@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

This final rule incorporates by reference into subpart E of Title 10, Code of Federal Regulations, part 431 (10 CFR part 431), the following standard:

- The Hydronics Institute Division of GAMA BTS–2000 Testing Standard, (''HI BTS–2000, Rev06.07''), *Method to Determine Efficiency of Commercial Space Heating Boilers,* Second Edition (Rev 06.07), 2007.

The Gas Appliance Manufacturers Association (GAMA) merged in 2008 with the Air-Conditioning and Refrigeration Institute to become the Air-Conditioning, Heating, and Refrigeration Institute (AHRI). The Hydronics Institute BTS–2000 Testing Standard can be obtained from AHRI. Copies of HI BTS–2000 can be obtained from the Hydronics Institute Section of AHRI, P.O. Box 218, Berkeley Heights, NJ 07922–0218, (866) 408–3831, or go to: *http://www.ahrinet.org/Content/OrderaStandard_573.aspx.*

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I. Summary of Final Rule

The Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*), as amended (EPCA), requires DOE to consider amending the existing Federal energy conservation standard for each type of equipment listed (generally, commercial water heaters, commercial packaged boilers, commercial air conditioning and heating equipment, and packaged terminal air conditioners and heat pumps), each time ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings* (ASHRAE Standard 90.1 or, in context, Standard 90.1), is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended,[1] DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate, DOE must establish an amended standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B))

DOE published a notice of proposed rulemaking on March 20, 2009 (March 2009 NOPR), in the **Federal Register** describing DOE's determination of scope for considering amended energy conservation standards with respect to certain heating, ventilating, air-conditioning, and water-heating equipment addressed in ASHRAE Standard 90.1–2007. 74 FR 12000; 12008–20. ASHRAE Standard 90.1–2007, which was formally adopted by the group's Board of Directors in early January 2008, generally retained the energy efficiency levels already in place, except with respect to commercial packaged boilers and one class of commercial package air conditioners and heat pumps—water cooled and evaporatively cooled air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h. *See* 74 FR 12004.

For the commercial package air conditioning and heating equipment covered in this rulemaking, ASHRAE assigned an effective date of January 10, 2008. For eight equipment classes of commercial packaged boilers, ASHRAE assigned an effective date of March 2, 2010. For the remaining two equipment classes of commercial packaged boilers covered by this rulemaking, ASHRAE created two-tiered effective dates—March 2, 2010, for an initial increase in the efficiency level and March 2, 2020, for the next required level.

In determining the scope of the rulemaking, DOE is statutorily required to ascertain whether the revised ASHRAE efficiency levels have become more stringent, thereby ensuring that any new amended national standard would not result in ''backsliding,'' which is prohibited under 42 U.S.C. 6295(o)(1) and 42 U.S.C. 6316(a). For those equipment classes for which ASHRAE set more-stringent efficiency levels (*i.e.,* commercial packaged boilers), DOE analyzed the economic and energy savings potential of amended national energy conservation standards (at both the new ASHRAE Standard 90.1 efficiency levels and more-stringent efficiency levels) in the March 2009 NOPR. 74 FR 12037–41.

The energy conservation standards in today's final rule, which apply to all commercial packaged boilers and water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h, satisfy all applicable requirements of EPCA and will achieve the maximum improvements in energy efficiency that are technologically feasible and economically justified. (*See* 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) DOE has concluded that, based on the information presented and its analyses, there is not clear and convincing evidence justifying adoption of more-stringent efficiency levels for this equipment.

Thus, in accordance with the criteria discussed in this notice, DOE is adopting amended energy conservation standards for ten equipment classes of commercial packaged boilers and adopting a new energy conservation standard for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h by adopting the efficiency levels specified by ASHRAE Standard 90.1–2007. Pursuant to EPCA, the compliance date for amended energy conservation standards based upon the levels in ASHRAE Standard 90.1 is either two or three years after the effective date of the requirement in the amended ASHRAE standard, depending on the type and size of the equipment. (*See* 42 U.S.C. 6313(a)(6)(D)) In the present case, the amended standards for commercial packaged boilers apply to the ten equipment classes of commercial packaged boilers manufactured on or after the date two years after the effective date specified in ASHRAE Standard 90.1–2007. (42 U.S.C. 6313(a)(6)(D)(i)) The amended standards for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h apply to such equipment manufactured on or after the date three years after the effective date specified in ASHRAE Standard 90.1–2007. (42 U.S.C. 6313(a)(6)(D)(ii)) Table I.1 shows the energy conservation standards that DOE

[1] Although EPCA does not explicitly define the term ''amended'' in the context of ASHRAE Standard 90.1, DOE provided its interpretation of what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007 (hereafter referred to as the March 2007 final rule). 72 FR 10038. In that rule, DOE explained that the statutory trigger requiring DOE to adopt uniform national standards based on ASHRAE action is the amending of an efficiency level by ASHRAE for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the energy efficiency level for that equipment type. *Id.* at 10042. In other words, if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A).

is adopting today and their respective effective dates.

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Table I.1. Current and Amended Federal Energy Conservation Standards for Specific Types of Commercial Equipment

ASHRAE Equipment Class	Federal Energy Conservation Standards	Amended Federal Energy Conservation Standards	
		Energy-Efficiency Levels	Effective Date
Commercial Package Air-Conditioning and Heating Equipment			
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and <760,000 Btu/h with No Heating or with Electric Resistance Heating*	None	11.0 EER**	1/10/2011
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and <760,000 Btu/h with Heating That is Other Than Electric Resistance Heating	None	10.8 EER	1/10/2011
Commercial Packaged Boilers			
Small Gas-Fired, Hot Water, Commercial Packaged Boilers	E_C = 80%	E_T = 80%	3/2/2012
Small Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers	E_C = 80%	E_T = 79%	3/2/2012
Small Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers	E_C = 80%	E_T = 77% E_T = 79%	3/2/2012 3/2/2022
Small Oil-Fired, Hot Water, Commercial Packaged Boilers	E_C = 83%	E_T = 82%	3/2/2012
Small Oil-Fired, Steam, Commercial Packaged Boilers	E_C = 83%	E_T = 81%	3/2/2012
Large Gas-Fired, Hot Water, Commercial Packaged Boilers	E_C = 80%	E_C = 82%	3/2/2012
Large Gas-Fired, Steam, All Except Natural Draft, Boilers	E_C = 80%	E_T = 79%	3/2/2012
Large Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers	E_C = 80%	E_T = 77% E_T = 79%	3/2/2012 3/2/2022
Large Oil-Fired, Hot Water, Commercial Packaged Boilers	E_C = 83%	E_C = 84%	3/2/2012
Large Oil-Fired, Steam, Commercial Packaged Boilers	E_C = 83%	E_T = 81%	3/2/2012

* British thermal units per hour (Btu/h).
** Energy efficiency ratio.

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In addition, DOE is adopting amendments to its test procedures for commercial packaged boilers, which manufacturers are required to use to certify compliance with energy conservation standards mandated under EPCA. See 42 U.S.C. 6314(a)(4) and 10 CFR part 431.86. Specifically, these amendments, which were proposed in the March 2009 NOPR, update the citations and references to the most recent version of the industry standards already referenced in DOE's test procedures. 74 FR 12020–22. In addition, these amendments specify a definition and methodology to test the thermal efficiency of these boilers, which is the metric DOE is adopting for eight of the ten equipment classes of commercial packaged boilers to conform with the new energy efficiency metric adopted in ASHRAE Standard 90.1–2007. Lastly, these amendments make a small number of technical modifications to DOE's existing test procedure for commercial packaged boilers, including deleting obsolete references and renumbering appropriate sections of the CFR.

II. Introduction

A. Authority

Title III of EPCA, Public Law 94–163, as amended, sets forth a variety of provisions concerning energy efficiency. Part A–1 [2] of Title III created the energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) In general, this program addresses the energy efficiency of certain types of

[2] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were redesignated as Parts A and A–1, respectively, in the United States Code.

commercial and industrial equipment. Part A–1 specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial packaged air-conditioning and heating equipment, packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm air furnaces, packaged boilers, storage water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE Standard 90.1, as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989), for each type of covered equipment listed in 42 U.S.C. 6313(a).

Congress further directed DOE to consider amending the existing Federal energy conservation standard for each type of equipment listed whenever ASHRAE amends the efficiency levels in Standard 90.1. (42 U.S.C. 6313(a)(6)(A)) For each type of listed equipment, EPCA directs that if ASHRAE amends Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level unless clear and convincing evidence supports a determination that adoption of a more stringent level would produce significant additional energy savings and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines that a more-stringent standard is justified under 42 U.S.C. 6313(a)(6)(A)(ii)(II), then it must establish such more-stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B))

ASHRAE officially released and made public on January 10, 2008, ASHRAE Standard 90.1–2007. This action triggered DOE's obligations under 42 U.S.C. 6313(a)(6), as outlined above.

Pertinent to any rulemaking in response to an ASHRAE revision of Standard 90.1, DOE must evaluate the amended efficiency levels to ensure that the adoption of the revised Standard 90.1 levels does not result in the promulgation of any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of covered equipment. (42 U.S.C. 6295(o)(1); 42 U.S.C. 6316(a)) This ''anti-backsliding'' provision acts as a statutory backstop to help preserve the stringency of established DOE energy efficiency standards. *See Natural Resources Defense Council* v. *Abraham,* 355 F.3d 179 (2d Cir. 2004).

When considering the possibility of a more-stringent standard, EPCA requires DOE to consider a variety of factors, with the primary ones being whether a more-stringent standard would be technologically feasible, economically justified, and be likely to produce significant additional energy savings. For example, EPCA provides that in deciding whether such a standard is economically justified, DOE must determine, after receiving comments on the proposed standard, whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the products which are likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)–(ii); 42 U.S.C. 6316(a))

Additionally, the Secretary may not prescribe an amended standard if interested persons have established by a preponderance of the evidence that the amended standard is ''likely to result in the unavailability in the United States of any product type (or class)'' with performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4); 42 U.S.C. 6316(a))

Federal energy conservation requirements for commercial equipment generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a)–(b)) However, DOE can grant waivers of preemption for particular State laws or regulations, in accordance with section 327(d) of EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D))

When considering more stringent standards for the ASHRAE equipment under consideration here, EPCA states, in relevant part, that there is a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard level is less than three times the value of the first-year energy (and, as applicable, water) savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(a)) Generally, DOE's life cycle cost (LCC) and payback period (PBP) analyses generate values that calculate the payback period for consumers of potential energy conservation standards, which includes, but is not limited to, the three-year payback period contemplated under the rebuttable presumption test discussed above. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(a). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

B. Background

1. ASHRAE Standard 90.1–2007

On January 9, 2008, ASHRAE's Board of Directors gave final approval to ASHRAE Standard 90.1–2007, which ASHRAE released on January 10, 2008. ASHRAE Standard 90.1 addresses efficiency levels for many types of commercial heating, ventilating, air-conditioning (HVAC), and water-heating equipment covered by EPCA; it revised the efficiency levels for certain commercial equipment, while leaving in

place the preexisting efficiency levels for the remaining equipment. For the equipment classes where ASHRAE left the preexisting efficiency in place, the efficiency levels specified in ASHRAE Standard 90.1–1999 were carried forward and continue to apply.[3]

Table II.1 below shows the current Federal energy conservation standards and the new efficiency levels for equipment affected by the changes made by ASHRAE Standard 90.1–2007. In section IV of the March 2009 NOPR, DOE assessed these equipment types to determine whether the ASHRAE amendments constitute increased energy conservation levels that would necessitate further analysis. 74 FR 12008–20. This step was necessary because DOE found that while ASHRAE had made changes in ASHRAE Standard 90.1–2007, it was not immediately apparent whether these changes to the energy efficiency levels would make the equipment more or less efficient, when compared to the existing Federal energy conservation standards. For example, when setting a standard using a different efficiency metric (as is the case for several types of commercial packaged boiler equipment), ASHRAE Standard 90.1–2007 changes the standard level from that specified in EPCA. However, it is not immediately clear whether this modified level will result in increased or reduced efficiency. Therefore, DOE undertook this additional threshold analysis to thoroughly evaluate the amendments in ASHRAE Standard 90.1–2007 in a manner consistent with its statutory mandate.

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[3] DOE reviewed and adopted some of the efficiency levels in ASHRAE Standard 90.1–1999 in a Final Rule published on January 12, 2001. 66 FR 3336.

Table II.1. Federal Energy Conservation Standards and Energy Efficiency Levels in ASHRAE Standard 90.1-2007 for Specific Types of Commercial Equipment*

ASHRAE Equipment Class	Federal Energy Conservation Standards	ASHRAE Standard 90.1-2007	
		Energy Efficiency Levels	Effective Date
Commercial Warm Air Furnaces			
Gas-Fired Commercial Warm Air Furnace	E_t = 80%	E_c = 80% Interrupted or intermittent ignition device, jacket losses not exceeding 0.75% of input rating, power vent, or flue damper**	1/10/2008‡
Oil-Fired Commercial Warm Air Furnace	E_t =81%	E_t = 81% Interrupted or intermittent ignition device, jacket losses not exceeding 0.75% of input rating, power vent, or flue damper**	1/10/2008‡
Commercial Package Air-Conditioning and Heating Equipment			
Through-the-Wall Air Conditioners	13.0 SEER*** (Effective as of 06/19/08)	12.0 SEER	1/23/2010
Through-the-Wall Air-Cooled Heat Pumps	13.0 SEER (Effective as of 06/19/08)	12.0 SEER 7.4 HSPF†	1/23/2010
Small Duct, High Velocity, Air-Cooled Air Conditioners	13.0 SEER (Effective as of 06/19/08)	10.0 SEER	1/10/2008
Small Duct, High-Velocity, Air-Cooled Heat Pumps	13.0 SEER (Effective as of 06/19/08)	10.0 SEER 6.8 HSPF	1/10/2008
Package Air-Cooled Air Conditioners with Cooling Capacity ≥760,000 Btu/h†† and with No Heating or with Electric Resistance Heating	None	9.7 EER†††	1/1/2010
Package Air-Cooled Air Conditioners with Cooling Capacity ≥760,000 Btu/h and with Heating That is Other Than Electric Resistance Heating	None	9.5 EER	1/1/2010
Water-Cooled and Evaporatively-Cooled Air Conditioner with Cooling Capacity ≥135,000 and <240,000 Btu/h, and with No Heating or with Electric Resistance Heating	11.0 EER	11.0 EER	1/10/2008‡
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥135,000 and <240,000 Btu/h, and with Heating That is Other Than Electric Resistance Heating	11.0 EER	10.8 EER	1/10/2008‡
Water-Cooled and Evaporatively Cooled Air	None	11.0 EER	1/10/2008‡

ASHRAE Equipment Class	Federal Energy Conservation Standards	ASHRAE Standard 90.1-2007	
		Energy Efficiency Levels	Effective Date
Conditioner with Cooling Capacity ≥240,000 Btu/h and with No Heating or with Electric Resistance Heating			
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and with Heating That is Other Than Electric Resistance Heating	None	10.8 EER	1/10/2008‡
Commercial Packaged Boilers			
Small Gas-Fired, Hot Water, Commercial Packaged Boilers	E_C = 80%	E_T = 80%	3/2/2010
Small Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers	E_C = 80%	E_T = 79%	3/2/2010
Small Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers	E_C = 80%	E_T = 77% E_T = 79%	3/2/2010 3/2/2020
Small Oil-Fired, Hot Water, Commercial Packaged Boilers	E_C = 83%	E_T = 82%	3/2/2010
Small Oil-Fired, Steam, Commercial Packaged Boilers	E_C = 83%	E_T = 81%	3/2/2010
Large Gas-Fired, Hot Water, Commercial Packaged Boilers	E_C = 80%	E_C = 82%	3/2/2010
Large Gas-Fired, Steam, All Except Natural Draft, Boilers	E_C = 80%	E_T = 79%	3/2/2010
Large Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers	E_C = 80%	E_T = 77% E_T = 79%	3/2/2010 3/2/2020
Large Oil-Fired, Hot Water, Commercial Packaged Boilers	E_C = 83%	E_C = 84%	3/2/2010
Large Oil-Fired, Steam, Commercial Packaged Boilers	E_C = 83%	E_T = 81%	3/2/2010

*All equipment classes included in this table are equipment where there is a perceived difference between the current Federal standard levels and the efficiency levels specified by ASHRAE Standard 90.1-2007. Although, in some cases, the efficiency levels in this table may appear to be equal or lower than the Federal energy conservation standards, DOE further reviewed the efficiency levels in ASHRAE Standard 90.1-2007 and presented its findings in section III of the March 2009 NOPR. 74 FR 12008-20.

**A vent damper is an acceptable alternative to a flue damper for those furnaces that draw combustion air from conditioned space.

***Seasonal energy efficiency ratio

†Heating seasonal performance factor

††British thermal units per hour (Btu/h)

†††Energy efficiency ratio

‡For the purposes of this final rule, the date shown in this column is the date of publication of ASHRAE Standard 90.1-2007 (Jan. 10, 2008) for equipment where the ASHRAE Standard 90.1-2007 initially appears to be different from the Federal energy conservation standards and where no effective date was specified by ASHRAE Standard 90.1-2007.

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2. Notice of Data Availability and Request for Public Comment

On July 16, 2008, DOE published a notice of data availability (July 2008 NODA) and request for public comment in the **Federal Register** as a preliminary step pursuant to EPCA's requirements for DOE to consider amended energy conservation standards for certain types of commercial equipment covered by ASHRAE Standard 90.1. 73 FR 40770 (July 16, 2008). Specifically, the July 2008 NODA presented for public comment DOE's analysis of the potential energy savings estimates for amended national energy conservation standards for types of commercial equipment based on: (1) the modified efficiency levels contained within ASHRAE Standard 90.1–2007; and (2) more-stringent efficiency levels. 73 FR 40772. DOE has described these analyses and preliminary conclusions and sought input from interested parties, including the submission of data and other relevant information. *Id.*

In addition, DOE discussed the changes introduced by Standard 90.1–2007 and presented an initial description of DOE's evaluation of each ASHRAE equipment type to determine which energy conservation standards, if any, have been set pursuant to EPCA, in order for DOE to determine whether the amendments in ASHRAE Standard 90.1–2007 result in increased efficiency levels when compared with the current Federal standards. 74 FR 40776–86. Regarding equipment for which ASHRAE increased efficiency levels through Standard 90.1–2007, DOE subjected these equipment efficiency levels to the potential energy savings analysis discussed above and presented the results for public comment. *Id.*

As a result of the preliminary determination of scope set forth in the July 2008 NODA, DOE found that the ten equipment classes of commercial packaged boilers described by ASHRAE were the only equipment type available on the market for which ASHRAE increased the efficiency levels. *Id.* DOE presented its methodology, data, and results for the preliminary energy savings analysis developed for most of the commercial packaged boiler equipment classes in the July 2008 NODA for public comment. 72 FR 40786–91.

3. Notice of Proposed Rulemaking

On March 20, 2009, DOE published a NOPR in the **Federal Register** proposing to amend the energy conservation standards for ten equipment classes of commercial packaged boilers and to adopt a new energy conservation standard for water-cooled and evaporatively-cooled commercial packaged air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h by adopting the efficiency levels specified by ASHRAE Standard 90.1–2007. 74 FR 12000.

The March 2009 NOPR also contained DOE's determination of scope for consideration of amended energy conservation standards with respect to certain heating, ventilating, air-conditioning, and water-heating equipment addressed in ASHRAE Standard 90.1–2007 and shown in Table II.1, above. 74 FR 12008–20. For commercial packaged boilers, DOE analyzed the economic and energy savings potential of amended national energy conservation standards (at both the new ASHRAE Standard 90.1 efficiency levels and more stringent efficiency levels). *See* generally 74 FR 12020–41. DOE also explained in the March 2009 NOPR that it did not analyze the economic and energy savings potential of amended national energy conservation standards for water-cooled and evaporatively cooled commercial packaged air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h because there is no equipment currently being manufactured in this equipment class. 74 FR 12013.

In addition, DOE proposed amendments to its test procedures for commercial packaged boilers to update the citations and references to the most recent version of the industry standards already referenced in DOE's test procedures. 74 FR 12020–22. DOE also proposed to add a definition and methodology to test the thermal efficiency for eight of the ten equipment classes of commercial packaged boilers, which was the metric DOE had proposed. *Id.*

4. Notice of Data Availability and Request for Public Comment—Environmental Assessment and Emissions Monetization

On June 3, 2009, DOE published a NODA and request for public comment on the environmental assessment (EA) for the March 2009 NOPR proposing amended energy conservation standards for commercial packaged boilers and water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h. 74 FR 26596. The EA included a concise examination of the impacts of emission reductions likely to result from the proposed standards for these two equipment types, as presented in Chapter 8 of the NOPR TSD. DOE also performed an emissions monetization analysis of those potential emission reductions and described the results of the monetization analysis in Chapter 9 of the NOPR TSD. *Id. See http://www1.eere.energy.gov/buildings/appliance_standards/commercial/pdfs/ch_8_ashrae_nopr_tsd.pdf* for the EA and *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/pdfs/ch_9_ashrae_nopr_tsd.pdf* for the monetization analysis. DOE received no comments on the EA or the emissions monetization analysis described by the June 2009 NODA. 74 FR 26596.

III. General Discussion of Comments Regarding the March 2009 NOPR, the ASHRAE Process, and DOE's Interpretation of EPCA's Requirements With Respect to ASHRAE Equipment

In response to the March 2009 NOPR, DOE received three comments from manufacturers, trade associations, and energy efficiency advocates. In addition, DOE received a comment from the U.S. Department of Justice (DOJ) regarding the potential impact on competition of proposed amended energy conservation standards for commercial packaged boilers and certain commercial package air-conditions and heat pumps. The issues raised in these comments, along with DOE's responses, are set forth below.

A. Equipment Classes With a Two-Tier Efficiency Level Specified in ASHRAE Standard 90.1–2007

For commercial packaged boilers, ASHRAE Standard 90.1–2007 further divides the existing equipment classes (*i.e.,* gas-fired and oil-fired) into 10 different categories. For two of the ten categories specified in ASHRAE Standard 90.1–2007, ASHRAE specifies a two-tier efficiency level, with one efficiency level effective in 2010 and another more-stringent efficiency level effective in 2020. The two categories where ASHRAE Standard 90.1–2007 specifies a two-tier efficiency levels are small gas-fired steam natural draft and large gas-fired steam natural draft commercial packaged boilers.

In response to DOE's proposal for small gas-fired steam natural draft and large gas-fired steam natural draft commercial packaged boilers, several parties commented during the public meeting regarding the adoption of two-tiered efficiency levels. The American Council for an Energy-Efficient Economy (ACEEE) asserted that for a rulemaking with an effective date of March 2, 2012, it is inappropriate for

DOE to pre-ordain any standards with an effective date of March 2, 2022. (ACEEE, Public Meeting Transcript, No. 12 at pp. 100–102) [4] ACEEE further stated that it could not see any reason why DOE would choose to bind itself today to any standards in 2022 and that in doing so, the dynamic at ASHRAE would likely be influenced by DOE's actions. (ACEEE, Public Meeting Transcript, No. 12 at p. 104) Lastly, ACEEE stated it did not believe the second-tier efficiency level was the subject of any ASHRAE discussions. (ACEEE, Public Meeting Transcript, No. 12 at pp. 100–102)

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) asserted that for steam natural draft commercial packaged boilers, it is worth having a second standard level with an effective date of March 2, 2022. (AHRI, Public Meeting Transcript, No. 12 at pp. 102–103) Contrary to ACEEE's assertion, AHRI stated that the delayed effective date (*i.e.,* the second tier) was a part of the ASHRAE discussions and the purpose of this two-tiered approach was to make an initial incremental efficiency change while allowing for a longer lead time for a larger improvement in efficiency for this very small segment of the market. According to AHRI, the delayed date was to put manufacturers of these products on notice that in 10 years the steam natural draft equipment must be as efficient as non-natural draft equipment. (AHRI, Public Meeting Transcript, No. 12 at pp. 102–103)

Burnham Hydronics Institute (Burnham) asserted that the proposed levels for these two equipment classes are going to result in energy savings through boilers being modified or taken off the market. (Burnham, Public Meeting Transcript, No. 12 at pp. 103–104) Burnham also predicted that natural gas steam natural draft products will be essentially eliminated in 2022 due to the second-tier requirements in ASHRAE Standard 90.1–2007. Burnham stated that manufacturers of these products received additional time because some applications (*e.g.,* boiler rooms with low head room) have no currently available alternatives. Burnham stated that the extra 10 years affords manufacturers and owners of buildings time to decide how to handle those potential issues and to develop an alternative. (Burnham, Public Meeting Transcript, No. 12 at pp. 103–104)

DOE is adopting the two-tier efficiency levels in ASHRAE Standard 90.1–2007 in today's final rule for small gas-fired steam natural draft and large gas-fired steam natural draft commercial packaged boilers. EPCA requires DOE to adopt energy efficiency standards for this equipment at the minimum level specified in any amended ASHRAE standard unless more-stringent standards are supported by clear and convincing evidence. (42 U.S.C. 6313(a)(6)(A)) Unless more-stringent standards are appropriate (in which case DOE can use its judgment to tailor the relevant standard level(s)), the statute does not provide DOE latitude to alter or disregard the ASHRAE Standard 90.1 levels in whole or part. Because ASHRAE adopted a tiered standard, DOE cannot adopt one efficiency level without adopting the latter efficiency level. Accordingly, in its economic and energy savings analysis, DOE analyzed these two equipment classes as if both the 2010 and 2020 levels will be adopted on their respective effective dates. In addition, DOE is adopting the two-tier efficiency levels in ASHRAE Standard 90.1–2007 as a ''package'' in today's final rule for small gas-fired steam natural draft and large gas-fired steam natural draft commercial packaged boilers.

B. The Definition of Amendment With Respect to the Efficiency Levels in an ASHRAE Standard

As DOE noted in the July 2008 NODA (73 FR 40771) and the March 2009 NOPR (74 FR 12006), EPCA does not explicitly define the term ''amended'' in the context of ASHRAE Standard 90.1. DOE had previously interpreted what would constitute an ''amended standard'' in the context of ASHRAE equipment in a final rule published in the **Federal Register** on March 7, 2007 (72 FR 10038). In that final rule, DOE explained that when ASHRAE increases the efficiency level for any of the equipment specified in EPCA section 342(a)(6)(A)(i) vis-á-vis the current DOE standards, that action triggers the requirement for DOE to consider adoption of uniform national standards based on these changes. 72 FR 10042. In other words, if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). 73 FR 40771.

In response to DOE's interpretation of the definition of ''amendment,'' the Appliance Standards Awareness Project (ASAP), ACEEE, the Alliance to Save Energy (ASE), the Natural Resources Defense Council (NRDC), the Northeast Energy Efficiency Partnership (NEEP), and the Northwest Power and Conservation Council (NPCC) submitted a joint comment, referred to as ''the Joint Comment,'' disagreeing with DOE's position in the March 2009 NOPR. (The Joint Comment, No. 19 at p. 1) Specifically, the Joint Comment argued that DOE acknowledges that the ASHRAE standards for several products have been revised relative to earlier versions. However, the Joint Comment pointed out that DOE takes an improperly constrained view of the meaning of ''amended,'' arbitrarily ruling out changes such as addition of prescriptive requirements, changes in metric and decreases in the standard. The Joint Comment referred to its earlier comments in response to the July 2008 NODA (*i.e.,* the Advocacy Joint Comment, No. 4) for additional detail and asserted that any of these changes fit within the meaning of ''amended'' and should be considered as changes requiring DOE review. The Joint Comment stated its belief that DOE has applied an unlawfully narrow definition to the word ''amendment.'' (The Joint Comment, No. 19 at p. 1)

DOE continues to view the statute's trigger as tied to an increased energy efficiency level for the affected equipment type. As described in the March 2007 final rule and the March 2009 NOPR, section 342 of EPCA requires DOE to establish energy conservation standards for the commercial equipment contained in this rulemaking at the minimum efficiency level specified in any amended ASHRAE standard unless more stringent standards are supported by clear and convincing evidence—in other words, to maintain uniform national standards consistent with those set in ASHRAE Standard 90.1 unless more stringent standards are justified. 72 FR 10042 and 74 FR 12006. Therefore, if ASHRAE has not amended a standard for a product subject to section 342, there is no change that would require action by DOE to consider amending the uniform national standard to maintain consistency with ASHRAE Standard 90.1. *Id.* If ASHRAE considered amending the standards for a given equipment type but ultimately chose not to do so, the statutory requirement that DOE adopt ASHRAE's amended

[4] ''ACEEE, Public Meeting Transcript, No. 12 at pp. 100–102'' refers to (1) to a statement that was submitted by the American Council for an Energy-Efficient Economy during the March 2009 NOPR Public Meeting. It was recorded in the Resource Room of the Building Technologies Program in the docket under ''Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment,'' Docket Number EERE–2008–BT–STD–0013, as comment number 12; and (2) a passage that appears on pages 100 through 102 of that statement.

standards is not triggered with respect to this equipment. *Id.* The statutory language specifically links ASHRAE's action to amend efficiency levels for specific equipment to DOE's action affecting the same equipment. *Id.* Given this statutory scheme, DOE does not agree with the Joint Comment's suggestion that amendment of the level for any ASHRAE product opens up the national standards for all ASHRAE products to potential amendment.

C. DOE's Review of ASHRAE Equipment Independent of the ASHRAE Standards Process

The Joint Comment asserted that the routine review of efficiency standards required by the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, (*i.e.,* section 305(b) of EISA 2007) clearly intends to establish a structure to review each DOE standard for ASHRAE covered equipment at least every six years. (The Joint Comment, No. 19 at pp. 1–2) The Joint Comment pointed out that several ASHRAE standards were last reviewed in 2001, including commercial water heaters and commercial furnaces. In the March 2009 NOPR, DOE maintained that reviews are not due for products for which the six-year clock has expired prior to enactment of EISA 2007. However, the commenters view such an interpretation as sheltering these products from further review by ASHRAE on an indefinite basis. According to the commenters, the intent of EISA 2007 was to subject all standards to regular reviews, not to create a haphazard special class with a potentially permanent exception from periodic DOE review. The Joint Comment took the position that DOE can rectify this situation by initiating a review of all ASHRAE standards that have not been changed in more than six years (*e.g.,* commercial furnaces, commercial water heaters). The Joint Comment argued that DOE must do so under the EISA 2007 provision. At a minimum, the Joint Comment asserted that DOE should conduct an initial analysis to assess potential energy savings from a full-fledged review of product standards, which have not been updated since the January 2001 final rule (66 FR 3336). (The Joint Comment, No. 19 at pp. 1–2)

In response, DOE acknowledges that section 305(b) of EISA 2007 amended section 342(a)(6) of EPCA by directing DOE to assess whether there is a need to update the Federal energy conservation standards for certain commercial equipment (*i.e.,* ASHRAE equipment) after a certain amount of time has elapsed. The section states that the Secretary must publish either a notice of determination that standards for a product do not need to be amended, or a notice of proposed rulemaking including amended proposed standards within 6 years after the issuance of any final rule establishing or amending a standard. (42 U.S.C. 6313(a)(6)(C)(i)) In addition, if the Secretary chooses to publish a notice of determination that the standards for a product do not need to be amended, a new determination must be issued within 3 years of the previous determination. (42 U.S.C. 6313(a)(6)(C)(iii)(II)) These requirements are applicable to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. (42 U.S.C. 6313(a)(6)(A)(i))

DOE believes that the commenters have misconstrued the amendments in section 305(b) of EISA 2007 by suggesting that the relevant provisions should be applied retroactively, rather than prospectively. As stated previously, 74 FR 12007, DOE does not believe Congress intended to apply these requirements retroactively, which would cause DOE to be in immediate violation of its legal obligations upon passage of the statute, thereby failing from its inception. DOE does not agree with the assertion that DOE is late and should initiate an immediate review of certain commercial equipment cited by the commenters above.

D. Combination Efficiency Level and Design Requirements in ASHRAE Standard 90.1–2007

For several classes of equipment, ASHRAE added design requirements in addition to the efficiency level requirements in ASHRAE Standard 90.1. For example, ASHRAE did not change the efficiency levels for oil-fired commercial warm air furnaces, but ASHRAE added three design requirements. ASHRAE Standard 90.1–2007 now specifies that commercial, oil-fired, warm air furnaces must use an interrupted or intermittent ignition device, have jacket losses no greater than 0.75 percent of the input rating, and use a power vent or flue damper.[5] DOE stated in the March 2009 NOPR that the language of EPCA authorizes DOE to establish a performance standard or a single design standard for certain types of commercial equipment, including oil-fired furnaces. 74 FR 12008–09.

The Joint Comment argued that rejecting multi-metric standards reversed a prior position adopted by DOE in the central air conditioner rulemaking. (The Joint Comment, No. 19 at p. 2) The Joint Comment strongly urged the new Administration to reconsider this policy because multi-metric standards are increasingly important for capturing cost-effective energy savings. It argued that ASHRAE found that such standards made sense for commercial furnaces and criticized DOE for not considering the ASHRAE changes. The Joint Comment stated that energy use for many products can be moderated through controls strategies, which are often not represented in a product's test method. (The Joint Comment, No. 19 at p. 2)

On that point, ASHRAE recommended that DOE consider the role of prescriptive requirements in the setting of national efficiency levels for commercial furnaces. (ASHRAE, No. FDMS DRAFT 5.1 at p. 2) ASHRAE commented that these prescriptive requirements provide critical characterizations of overall equipment efficiency and total energy use. According to ASHRAE, these requirements are designed to work in cooperation with the numerical efficiency metric to achieve greater levels of energy efficiency than possible through the use of the numerical metric alone. ASHRAE asserted that as it continues to develop Standard 90.1 and to decrease the total energy use associated with that standard, such additional prescriptive requirements likely will become even more prevalent. It argued that increasing the stringency of Standard 90.1 will require greater focus on systems as a whole and consideration of all factors and attributes that contribute to the energy use associated with that system. In order to achieve the maximum energy efficiency envisioned by the standard, ASHRAE strongly encouraged DOE to reconsider its policy of not including accompanying prescriptive requirements in its energy conservation analysis. (ASHRAE, No. FDMS DRAFT 5.1 at p. 2)

DOE notes that its response to this issue is grounded in the requirements of EPCA, not DOE policy, and that the commenters offered no other plausible alternative reading of this statutory provision. In this rulemaking, DOE only reviewed the combination efficiency

[5] ''Jacket losses'' refer generally to the heat loss to the surroundings from the furnace, excluding flue losses.

level and design requirements for gas-fired and oil-fired commercial warm air furnaces because these were the only equipment classes where DOE's initial review of the efficiency levels in ASHRAE Standard 90.1–2007 for this equipment revealed a perceived change when compared to the Federal energy conservation standards for this equipment. As described in the March 2009 NOPR, DOE has determined that the design requirements in ASHRAE Standard 90.1–2007 for gas-fired and oil-fired commercial warm air furnaces are beyond the scope of its legal authority. 74 FR 12008–10. More specifically, the language of EPCA authorizes DOE to establish ''energy conservation standards'' that set either a single performance standard or a single design requirement—not both. *See* 42 U.S.C. 6311(18). As such, a standard that establishes both a performance standard and a design requirement is beyond the scope of DOE's legal authority, as would be a standard that included more than one design requirement. In this case, ASHRAE Standard 90.1–2007 recommends three design requirements. Thus, if DOE were to replace its existing, performance-based standard with a design requirement, the statute would not permit adoption of all three design requirements in ASHRAE Standard 90.1–2007. Furthermore, such a change would also necessitate an initial DOE determination that the new requirement would not result in backsliding when compared to the current standards.

E. The Proposed Energy Conservation Standards for Commercial Packaged Boilers

In the March 2009 NOPR, DOE proposed the efficiency levels in ASHRAE Standard 90.1–2007 for the ten classes of commercial packaged boilers. 74 FR 12002. DOE received four comments in response to its proposal for commercial packaged boilers. Specifically, the Joint Comment stated its support for DOE's proposal on commercial packaged boilers. (The Joint Comment, No. 19 at p. 1) Burnham also stated its support for DOE's direction in the NOPR and urged DOE to issue a final rule as soon as possible. (Burnham, Public Meeting Transcript, No. 12 at p. 96) AHRI stated that it agrees with DOE's direction in the NOPR and pointed out that there is a ''residual value'' in transitioning from the combustion efficiency metric to the thermal efficiency metric for commercial packaged boilers. (AHRI, Public Meeting Transcript, No. 12 at pp. 97–98) ASHRAE commended DOE for its proposed handling of commercial packaged boilers in the March 2009 NOPR. ASHRAE pointed out consensus agreements between manufacturers and energy-efficiency advocates provide a valuable means of improving energy efficiency with necessary consideration for technological and economic feasibility, as DOE has acknowledged. (ASHRAE, No. FDMS DRAFT 5.1 at p. 1)

Lastly, DOJ concluded that the proposed standards for commercial packaged boilers are not likely to have an adverse effect on competition. (DOJ, No. 15 at p. 2) In reaching this conclusion, DOJ noted the absence of any competitive concerns raised by industry participants at the public meeting. In addition, DOJ noted the efficiency levels in the proposed standards are based on a consensus recommendation submitted to ASHRAE by efficiency advocacy groups and the trade association for manufacturers of commercial packaged boilers. Based on these facts, DOJ stated its belief that the new standard would not likely reduce competition. *Id.*

F. Commercial Electric Instantaneous Water Heaters

SEISCO INTERNATIONAL (SEISCO) commented that it has been (and would continue to be) significantly adversely affected by DOE's decisions not to create a product class for electric tankless water heaters having an output rated greater than 12 kilowatts, as well as to exclude the advanced electric tankless and electric resistance storage tank from the ENERGY STAR program. (SEISCO, No. 17 at p. 1) SEISCO's comments asserted that this type of equipment would provide energy savings benefits when compared to traditional storage-type water heaters. (SEISCO, No. 17 at p. 8)

While DOE acknowledges SEISCO's concerns with regard to the product classes for electric tankless water heaters, these concerns are beyond the scope of this rulemaking. Currently, ASHRAE Standard 90.1 does not include an efficiency level or a prescriptive requirement for commercial electric tankless water heaters. In order for DOE to consider amendments, ASHRAE must amend Standard 90.1 to add test procedures and efficiency levels for these equipment types. In addition, DOE notes that it is not addressing SEISCO's concerns regarding the ENERGY STAR program for electric tankless and electric resistance storage water heaters because it is not part of the ASHRAE rulemaking process.

IV. General Discussion of the Changes in ASHRAE Standard 90.1–2007 and Determination of Scope for Further Rulemaking Analyses

As discussed above, before beginning an analysis of economic impacts and energy savings that would result from adopting the efficiency levels specified by ASHRAE Standard 90.1–2007 or more-stringent efficiency levels, DOE first sought to determine whether the amended Standard 90.1 efficiency levels represented an increase in efficiency above the current Federal standard levels. DOE discussed each equipment class where these levels differ from the current Federal standard level, along with DOE's preliminary conclusion as to the action DOE would take with respect to that equipment in the March 2009 NOPR. *See* 74 FR 12008–20. DOE tentatively concluded from this analysis that the only efficiency levels that represented an increase in efficiency above the current Federal standards were those for certain classes of commercial packaged boilers and water cooled and evaporatively cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h. For a more detailed discussion of this approach, readers should refer to the preamble to the March 2009 NOPR. *See Id.* DOE received no additional comments on this topic in response to the March 2009 NOPR, so DOE is using the same approach in this final rule.

V. Methodology and Discussion of Comments for Commercial Packaged Boilers

This section provides a brief overview of the analyses DOE has performed for this rulemaking with respect to commercial packaged boilers and the comments received in response to the March 2009 NOPR. A separate subsection addresses each analysis and its respective comments. DOE used a spreadsheet to calculate the LCCs and PBPs of potential amended energy conservation standards. DOE used another spreadsheet to provide shipments forecasts and then calculate national energy savings and net present value impacts of potential amended energy conservation standards.

This section also briefly describes the amendments to the DOE test procedure for commercial packaged boilers to require testing in terms of thermal efficiency, consistent with the amended efficiency levels in ASHRAE Standard 90.1–2007. DOE described all of the test procedure changes it is adopting in

today's final rule in the March 2009 NOPR. *See* 74 FR 12020–22.

A. Test Procedures

Section 343(a) of EPCA (42 U.S.C. 6314(a)) requires the Secretary to amend the test procedures for packaged boilers to be the latest version generally accepted by industry or the rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) [6] or by ASHRAE, as referenced by ASHRAE/IESNA Standard 90.1, unless the Secretary determines by clear and convincing evidence that the latest version of the industry test procedure: (1) Is not reasonably designed to produce results reflecting energy efficiency, energy use, and estimated operating costs and (2) would be unduly burdensome to conduct. Additionally, if the procedure is one used for determining estimated annual operating costs, the procedure must provide that the costs are calculated from energy use measurements in a representative average use cycle and from representative average unit costs of the energy needed to operate the equipment during the cycle. (42 U.S.C. 6314(a)(4)(B) and 42 U.S.C. 6314(a)(3)) DOE published a final rule on October 21, 2004, that amended its test procedure for commercial packaged boilers to incorporate by reference the industry test procedure for commercial packaged boilers, the Hydronics Institute (HI) division of the Gas Appliance Manufacturer's Association (GAMA) Boiler Testing Standard BTS–2000, ''Method to Determine the Efficiency of Commercial Space Heating Boilers'' (HI BTS–2000). 69 FR 61949. This rulemaking responded to ASHRAE's action in ASHRAE Standard 90.1–1999 to revise the test procedures for certain commercial equipment, including commercial packaged boilers.

In 2007, AHRI made several changes to BTS–2000 (Testing Standard for Commercial Space Heating Boilers) and reaffirmed the continued use of BTS–2000 (Rev 06.07) as the recommended testing standard. As noted in the NOPR, DOE believes the revised BTS–2000 (Rev 06.07) is reasonably designed to produce results reflecting energy efficiency, energy use, and estimated operating costs, and is not unduly burdensome to conduct. 74 FR 12020. Therefore, DOE is amending the uniform test procedure for commercial packaged boilers to incorporate by reference HI BTS–2000 (Rev 06.07). In addition, for the reasons described in the NOPR, DOE is removing the incorporation by reference of, and any references to, the American Society of Mechanical Engineers (ASME) Power Test Codes for Steam Generating Units, ASME PTC 4.1–1964, reaffirmed 1991 (including 1968 and 1969 addenda) (ASME PTC 4.1) as an alternate test method for rating the efficiency of steel commercial packaged boilers.[7] 74 FR 12020. DOE is making this change because this particular test method is no longer an approved method of rating the efficiency of steel commercial packaged boilers under DOE's regulations. Eliminating the references to ASME PTC 4.1 in the CFR does not introduce any changes to the test procedure for this equipment; it simply removes obsolete references. Manufacturers are required to test all steel boilers using the method that references the HI BTS–2000 test procedure, as they have been since October 23, 2006.

Currently, the uniform test method for the measurement of energy efficiency of commercial packaged boilers requires that only the combustion efficiency be tested and calculated in accordance with the HI BTS–2000. 10 CFR 431.86(c)(1)(ii). In this final rule, DOE is adopting as Federal energy conservation standards several thermal efficiency levels described in ASHRAE Standard 90.1–2007 that were proposed in the NOPR. For this reason, DOE is amending the definitions in 10 CFR 431.82 to incorporate the definition of ''thermal efficiency'' as written in section 3.0 of the HI BTS–2000 (Rev 06.07) test procedure and proposed in the NOPR. 74 FR 12021. Thus, DOE is adding the definition of ''thermal efficiency'' to 10 CFR 431.82 to read as follows: ''Thermal efficiency for a commercial packaged boiler is determined using test procedures prescribed under § 431.86 and is the ratio of the heat absorbed by the water or the water and steam to the higher heating value in the fuel burned.''

In addition to adding the definition of ''thermal efficiency'' to its regulations, DOE is amending the definition of ''combustion efficiency,'' as proposed and described in the NOPR, to remove the language defining the term as ''the efficiency descriptor for packaged boilers.'' 74 FR 12021. Thus, DOE is amending the definition of ''combustion efficiency'' in 10 CFR 431.82 to read as follows: ''Combustion efficiency for a commercial packaged boiler is determined using the test procedures prescribed under § 431.86 and equals 100 percent minus percent flue loss (percent flue loss is based on input fuel energy).''

DOE is amending 10 CFR 431.86 (Uniform test method for measurement of energy efficiency of commercial packaged boilers) to include requirements for the measurement and rating of thermal efficiency for those commercial packaged boiler equipment classes where the thermal efficiency metric is being used in today's final rule, after the effective date of this rulemaking (*i.e.*, March 2, 2012). DOE is also amending 10 CFR 431.86 to specify that combustion efficiency should be measured and rated for the two commercial packaged boiler equipment classes where the combustion efficiency metric is being used in today's final rule (*i.e.*, large gas hot water and large oil hot water commercial packaged boilers). These changes are described in detail in the NOPR and can be found in the regulatory text at the end of this notice. 74 FR 12021, 12048–49. DOE did not receive any comments in response to its test procedure proposals in the NOPR; thus, DOE is adopting them as proposed. These test procedure changes will become effective concurrently with the amended standard levels being adopted in today's final rule.

DOE proposed several test procedure updates responding to the changes made to HI BTS–2000 (Rev 06.07), 74 FR 12021–22, and is now amending the test procedure to adopt those changes, which are described in detail in the NOPR and are contained in the regulatory text at the end of this notice. *See id.* These changes do not introduce any changes to the methods in the test procedure. Manufacturers should use

[6] The Air-Conditioning and Refrigeration Institute (ARI) and the Gas Appliance Manufacturers Association (GAMA) announced on December 17, 2007, that their members voted to approve the merger of the two trade associations to represent the interests of cooling, heating, and commercial refrigeration equipment manufacturers. The merged association became AHRI on January 1, 2008.

[7] In the October 2004 test procedure final rule for commercial packaged boilers, DOE also incorporated by reference the American Society of Mechanical Engineers (ASME) Power Test Codes for Steam Generating Units, ASME PTC 4.1–1964, reaffirmed 1991 (including 1968 and 1969 addenda) (ASME PTC 4.1) as an alternate test method for rating the efficiency of steel commercial packaged boilers only. 69 FR 61956 (Oct. 21, 2004). DOE provided ASME PTC 4.1, with modifications, as an alternate test procedure for steel commercial packaged boilers because many manufacturers of steel boilers were unfamiliar with HI BTS–2000 and its predecessor, HI–1989, and typically tested their boilers using the ASME PTC 4.1 test procedure. Id. at 61951. DOE designated a transition period for manufacturers to convert from using the ASME PTC 4.1 test procedure to the HI BTS–2000 test procedure. Id. This would allow manufacturers of steel boilers an opportunity to become familiar with HI BTS–2000 and ensure that their equipment would be able to comply with EPCA standards using that procedure. Id. at 61956. DOE stated that it would allow the use of ASME PTC 4.1 as an alternate test procedure for two years after the publication of the October 2004 final rule. Id. The transition period ended on October 23, 2006, and now all commercial boilers are required to be tested using the HI BTS–2000 test procedure. 10 CFR 431.86.

the revised version of the test procedure (*i.e.,* HI BTS–2000 (Rev 06.07)) to represent their model's energy efficiency and compliance with the current Federal energy conservation standards effective September 21, 2009.

DOE is also adopting the proposed amendments for 10 CFR 431.86(c)(2)(iii), ''Test Measurements for a Boiler Capable of Supplying Either Steam or Water.'' As explained in the NOPR, DOE proposed to require manufacturers of large dual output commercial packaged boilers (*i.e.,* boilers capable of producing both steam and hot water) to test for both the combustion and thermal efficiencies of these boilers. DOE is requiring both the combustion and thermal efficiency test be conducted by manufacturers because the ASHRAE-amended efficiency levels for large dual output commercial packaged boilers would require this equipment to meet an efficiency level using both metrics (*i.e.,* combustion efficiency for a large boiler operated in hot water mode, and thermal efficiency for operation in steam mode). 74 FR 12022. Consistent with this approach, DOE is amending 10 CFR 431.86(c)(2)(iii) to require the testing and measurement of both thermal and combustion efficiency for any boiler capable of producing steam and hot water (*i.e.,* a dual output boiler) that is being tested only as a steam boiler for equipment manufactured on and after March 2, 2012. For equipment manufactured prior to that date, manufacturers will need to continue testing only for the combustion efficiency of dual output boilers. Manufacturers could also choose to perform both tests separately on large dual output boilers, including the combustion efficiency test in hot water mode and the thermal efficiency test in steam mode. Consequently, DOE is also amending the test procedure to permit manufacturers to test large dual output boilers separately for combustion efficiency in hot water mode and for thermal efficiency in steam mode, as proposed in the NOPR, if they choose to do so. 74 FR 12022.

In addition, DOE is adopting provisions in this final rule allowing commercial packaged boilers capable of supplying either steam or water (*i.e.,* dual output boilers) to test in steam mode only. In other words, DOE is allowing manufacturers to test dual output boilers only in steam mode, although large dual output boiler manufacturers must test for both thermal and combustion efficiency. This approach will ensure that a dual output boiler is meeting the thermal efficiency requirement when operated in steam mode and the combustion efficiency requirement when operated in hot water mode, because achieving compliance in steam mode is generally more challenging. Thus, a boiler that complies with the standard in steam mode would be presumed to meet the standard in hot water mode. DOE believes that giving manufacturers the option of testing dual output commercial packaged boilers only in steam mode would suffice for compliance purposes, and will avoid an unnecessary burden on manufacturers of dual output boilers.

The regulatory text following the preamble to today's notice contains the changes made to the definitions, reference materials, effective dates, and the uniform test procedure for commercial packaged boilers in 10 CFR 431.86.

B. Market Assessment

For the NOPR phase of DOE's review of the ASHRAE Standard 90.1–2007 efficiency levels, DOE developed a market assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. 74 FR 12022–24. The subjects addressed in the market assessment for this rulemaking included equipment definitions, equipment classes, manufacturers, quantities, and types of equipment sold and offered for sale. In response to the March 2009 NOPR, DOE did not receive any written or oral comments pertaining to the market assessment. Consequently, DOE did not revise the market analysis that was performed for the March 2009 NOPR. DOE summarized the key findings. 74 FR 12022–24. For additional detail, see chapter 2 of the final rule TSD.

C. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency of a piece of equipment DOE is evaluating for potential amended energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers and the Nation. The engineering analysis identifies representative baseline equipment, which is the starting point for analyzing the possible energy-efficiency improvements. DOE typically structures its engineering analysis around one of three methodologies: (1) The design-option approach, which calculates the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, which calculates the relative costs of achieving increases in energy efficiency levels without regard to the particular design options used to achieve such increases; and/or (3) the reverse-engineering or cost-assessment approach, which involves a ''bottom-up'' manufacturing cost assessment based on a detailed bill of materials derived from tear-downs of the product being analyzed.

1. Approach and Assumptions

As explained in the March 2009 NOPR, DOE used an efficiency-level approach to evaluate the cost of commercial packaged boilers at the baseline efficiency level, and those above it. 74 FR 12024–27. DOE used the efficiency level approach because of the wide variety of designs available on the market and because the efficiency level approach does not examine a specific design to reach each of the efficiency levels. The efficiency levels that DOE considered in the engineering analysis were representative of commercial packaged boilers currently being produced by manufacturers at the time the engineering analysis was developed. DOE relied primarily on data collected through discussions with mechanical contractors or commercial boiler equipment distributors to develop its cost-efficiency relationship for commercial packaged boilers. DOE chose to collect contractor costs at three representative capacities for each ''small'' equipment class (400, 800, and 1500 kBtu/h) and then normalize the contractor costs by capacity to create a single cost-efficiency curve with 800 kBtu/h as the representative capacity for each equipment class, as described in the NOPR. 74 FR 12024. For each ''large'' equipment class analyzed, DOE used a similar approach, in which it collected cost data and created a cost-efficiency curve for one representative output capacity, 3,000 kBtu/h.

To extend the analysis to oil-fired commercial packaged boilers, DOE estimated that they are, on average, 3 percent more efficient than gas-fired boilers of identical construction because of the similar design characteristics. Also, since the construction of oil-fired and gas-fired boilers is basically the same, with the exception of some differences in controls, DOE assumed the incremental cost for increasing the efficiency of both types of boilers would be the same. The difference in the cost of controls would make no difference in the incremental cost of equipment because the same additional cost for controls would be applied across the range of oil-fired commercial boiler efficiencies. Once the cost-efficiency curves were normalized, the cost of the controls was subtracted. For these

reasons, DOE estimated the incremental cost-efficiency curves for oil-fired equipment by shifting the cost-efficiency curves for each gas-fired equipment class by 3 percent.

In addition, DOE analyzed dual output boilers by classifying them as ''steam only'' boilers and assuming efficiency ratings for dual output boilers were representative of the efficiency of the boiler tested in ''steam mode.'' DOE assumed that the efficiency ratings for dual output boilers were representative of the efficiency of the boiler when tested in steam-only mode because the current procedure instructs manufacturers to test boilers capable of producing both steam and hot water either only in steam mode or in both steam mode and hot water mode. 10 CFR 431.86(c)(2)(iii)(A). Further, the test procedure states that if a manufacturer chooses to test a boiler in both steam mode and hot water mode, the boiler must be rated for efficiency in each mode as two separate listings in the I=B=R Directory. 10 CFR 431.86(c)(2)(iii)(B). 74 FR 12026–27. This approach had the effect of analyzing the most energy-intensive mode of dual output boilers.

DOE only received one comment in response to the engineering analysis presentation described in the March 2009 NOPR. ACEEE stated that it would like DOE to review its estimates of increased cost versus the historical record. (ACEEE, Public Meeting Transcript, No. 12 at p. 47) ACEEE stated that DOE is using a methodology asserted to be true without an effort to verify it, which is unfair to the entire community, including manufacturers.

DOE does not find merit to ACEEE's claims that the price change of meeting an amended standard declines after the standards' adoption. DOE recognizes that every change in minimum energy conservation standards is an opportunity for manufacturers to make investments beyond what would be required to meet the new standards in order to minimize the costs or to respond to other factors. DOE's manufacturing cost estimates seek to gauge the most likely industry response to the proposed energy conservation standards. DOE's analysis of responses must be based on currently available technology that will be nonproprietary when a rulemaking becomes effective, and thus cannot speculate on future product and market innovation.

DOE did not receive any other comments suggesting revisions to its approach to the engineering analysis or to the assumptions included in the engineering analysis in response to the March 2009 NOPR. Therefore, DOE did not revise its engineering analysis. Chapter 3 of the final rule TSD provides further detail on the methods used for the engineering analysis.

2. Results

The result of the engineering analysis is a set of cost-efficiency curves. Creating the cost-efficiency curves involved three steps: (1) Plotting the contractor cost versus efficiency; (2) aggregating the cost data by manufacturer; and (3) using an exponential regression analysis to fit a curve that best defines the aggregated data. DOE correlated the contractor cost as a function of each commercial packaged boiler's rated efficiency. DOE also normalized the data by adjusting the costs of every manufacturer's equipment so that the cost of its equipment was zero at the baseline ASHRAE Standard 90.1–2007 efficiency levels. This was done to show the average incremental cost of increasing efficiency above the ASHRAE Standard 90.1–2007 levels for each equipment class. DOE only presents the incremental costs of increasing the efficiency of a commercial packaged boiler in the final rule TSD to avoid the possibility of revealing sensitive information about individual manufacturers' equipment. While most manufacturers publish the rated thermal and/or combustion efficiencies of their commercial packaged boilers according to AHRI specifications, some do not and different manufacturers might have substantially different absolute costs for their equipment at the same efficiency level due to design modifications and manufacturing practices.

The cost-efficiency curves do not represent any single manufacturer, and they do not describe any variance among manufacturers. The curves simply represent, on average, the industry's cost to increase equipment efficiency. For this analysis, several types of boiler construction are aggregated into single equipment classes, and the cost-efficiency curves represent only an average boiler and not any individual boiler with any specific design characteristics. DOE attempted in its analysis to determine what the average cost-efficiency relationship would look like across the range of boiler types included in each equipment class. The results show that the cost-efficiency relationships for each of the ten equipment classes are nonlinear. As efficiency increases, manufacturing becomes more difficult and more costly for manufacturers to meet higher efficiency levels. Chapter 3 of the final rule TSD provides additional information about the engineering analysis, as well as the complete set of cost-efficiency results.

D. Markups To Determine Equipment Price

DOE understands that the price of commercial boilers depends on the distribution channel the customer uses to purchase the equipment. In the March 2009 NOPR, DOE explained how it developed the distribution channel markups for commercial packaged boilers. 74 FR 12027–28. DOE did not receive comments on the distribution channel markups or on their development in response to the March 2009 NOPR. Consequently, DOE used the same distribution channels and methodology to calculate markups for the final rule analysis as was used in the March 2009 NOPR.

Because DOE had developed costs for mechanical contractors directly in the engineering analysis, DOE estimated customer costs using a markup chain beginning with the mechanical contractor cost. DOE did not develop an estimate for manufacturer selling prices in the engineering analysis and consequently, did not develop an estimate of markups for national account distribution channels with sales directly from manufacturers to customers. DOE estimated most sales of commercial packaged boilers involved mechanical contractors because of installation complexity and the relatively few shipments made to mercantile/retail building types where national accounts are more common. Consequently, it was unnecessary to develop separate markups for costs through a national account distribution chain or directly from wholesalers.

DOE developed distributional channel markups in the form of multipliers that represent increases above the mechanical contractor cost. DOE applied these markups (or multipliers) to the mechanical contractor costs it developed from the engineering analysis. Sales taxes and installation costs were added to arrive at the final installed equipment prices for baseline and higher-efficiency equipment. DOE used two distribution channels for commercial boilers to describe how the equipment passes from the mechanical contractor to the customer (Table V.1). All sales for replacement applications are assumed to flow through channel 1. The analysis assumes that sales for New Construction flow through channel 2 depicted below.

TABLE V.1—DISTRIBUTION CHANNELS FOR COMMERCIAL PACKAGED BOILER EQUIPMENT

Channel 1 (replacements)	Channel 2 (new construction)
Mechanical Contractor.	Mechanical Contractor.
	General Contractor.
Customer	Customer.

DOE estimated shipment weights of approximately 33% for new construction and 67% for the replacement markets based on data developed for the shipments model and based on growth in new construction and replacement equipment in the existing stock. DOE received no comment on the new construction and replacement shipment fractions and did not modify these values for the final rule.

For each step in the distribution channels presented above, DOE estimated a baseline markup and an incremental markup. Both baseline and incremental markups depend only on the particular distribution channel and are independent of the boiler efficiency levels. DOE based the mechanical contractor markups on data from the Air Conditioning Contractors of America (ACCA) [8] and on the 2002 U.S. Census Bureau financial data [9] for the plumbing, heating, and air conditioning industry. DOE derived the general contractor markups from U.S. Census Bureau financial data for the commercial and institutional building construction sector.

The overall markup is the product of all the markups (baseline or incremental) for the different steps within a distribution channel plus sales tax. DOE calculated sales taxes based on 2008 State-by-State sales tax data reported by the Sales Tax Clearinghouse. Because both contractor costs and sales tax vary by State, DOE developed distributions of markups within each distribution channel by State. Chapter 5 of the final rule TSD provides additional detail on markups.

E. Energy Use Characterization

DOE used the building energy use characterization analysis to assess the energy savings potential of commercial boilers at different efficiency levels. In the March 2009 NOPR, DOE explained how it developed the energy use analysis for commercial packaged boilers. 74 FR 12028–29. This analysis estimates the energy use of commercial boilers at specified efficiency levels by using previously calculated Full Load Equivalent Operating Hour (FLEOH) metrics by building type and by climate across the United States. FLEOHs are effectively the number of hours that a system would have to run at full capacity to serve a total load equal to the annual load on the equipment. Boiler FLEOHs are calculated as the annual heating load divided by the equipment capacity. The FLEOH values used for the boiler analysis were based on simulations documented for the ''Screening Analysis for EPACT-Covered Commercial [Heating, Ventilating and Air-Conditioning] HVAC and Water-Heating Equipment'' [10] (hereafter, 2000 Screening Analysis). (66 FR 3336 (Jan. 12, 2001)) and incorporated seven different building types and 11 different U.S. climates. DOE received no comments on the FLEOH assumptions forming the basis of the energy use characterization.

For each equipment class, DOE estimated the energy use of a given piece of equipment by multiplying the characteristic equipment output capacity by the FLEOH appropriate to each combination of representative building type and climate location. The product is effectively the total annual heat output from the boiler. The input energy is then determined by dividing the annual heat output by the thermal efficiency of the equipment at each efficiency level. The thermal efficiency is used here for all equipment classes since it defines the relationship between energy input and useful output of a commercial packaged boiler. For the two classes where a thermal efficiency metric was not specified by ASHRAE Standard 90.1–2007, an estimate of the thermal efficiency of equipment just meeting the combustion efficiency requirements specified by ASHRAE Standard 90.1–2007 was developed based on DOE's market analysis. DOE adjusted the unit energy use for each boiler to reflect the equipment thermal efficiency level DOE considered.

For condensing hot water boilers, DOE recognized that the thermal efficiency of a commercial packaged boiler in actual use depends on the return water conditions. In turn, the return water conditions are dependent upon the hydronic system design and control.[11] For DOE's analysis, the rated thermal efficiencies for fully condensing equipment were further adjusted to reflect return-water conditions based on installation in existing buildings with conventional hydronic heating coils. DOE's estimates allow for the supply water temperature to reset sufficiently to meet the estimated heating coil loads throughout the year.

DOE received several specific comments on the energy use analysis with regard to the development and use of seasonal efficiencies for condensing boilers. During the public meeting, ACEEE commented that it was concerned that the most typical application, particularly in the replacement market, for a commercial packaged boiler is providing hydronic heat, not supplemental heat in a variable air volume (VAV) system. ACEEE asserted that the supply temperature modulation is highly applicable as long as the user maintains the necessary return temperature. (ACEEE, Public Meeting Transcript, No. 12 at p. 58) ACEEE further commented that the discussion and treatment of supply temperature reset controls, which influence the seasonal efficiency parallels discussions used in the negotiated consensus agreement for residential boilers that DOE rejected. (ACEEE, Public Meeting Transcript, No. 12 at p. 61)

In response to the comments from ACEEE, DOE notes that the actual calculations for the development of the seasonal efficiency, as outlined in the TSD, assume a hydronic heating load that is a function of outdoor temperature, the calculations were also not reflective of a VAV-type reheat application. DOE's estimate of the average thermal efficiency impact for condensing boilers reflects the load-weighted thermal efficiency for a system serving hydronic air-heating coils in that type of space heating application. This is discussed in chapter 4 of the final rule TSD.

EarthJustice asked a clarifying question regarding the magnitude of the impact that reset temperature controls had on efficiency, suggesting it was roughly 3 percent for condensing boilers and less than 1 percent for non condensing boilers. (EarthJustice, Public Meeting Transcript, No. 12 at p. 60).

[8] Air Conditioning Contractors of America. Financial Analysis for the HVACR Contracting Industry, 2005. Available at: *http://www.acca.org.*

[9] The 2002 U.S. Census Bureau financial data for the plumbing, heating, and air conditioning industry is the latest version data set and was issued in December 2004. Available at: *http://www.census.gov/prod/ec02/ec0223i236220.pdf.*

[10] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Conservation Program for Consumer Products: Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment Screening Analysis'' (April 2000).

[11] A hydronic system is the distribution system for hot or cold water in a closed loop throughout a building or other type of space for the purposes of heating or cooling. The description of such a system would include the piping, the heating and cooling coils, and radiators, as well as the controls used to operate the system.

In response to the comment from EarthJustice, DOE generally agrees that this is a correct interpretation. Literature on the impact of supply water temperature reset (*i.e.,* resetting the supply water temperature from the boiler in response to building heating load or a suitable other sensed condition like outdoor temperature serving as a proxy for load) on boiler efficiency generally shows that for return water temperatures from 140 °F to 180 °F (*i.e.,* above the temperatures required for condensing), the change in boiler efficiency is typically less than 1 percent, with the actual value dependent upon the fraction of full load input, whether the boiler is a condensing boiler or not. For condensing boilers, which can operate at lower return temperatures, reducing the return water temperature below 140 °F results in significant increases in the boiler's thermal efficiency, with the magnitude of the impact being a function of the fraction of full load input at these temperatures. Very low return water temperatures (*e.g.,* 60 °F) can result in thermal efficiencies of 99% in some condensing boiler equipment designs, but few hydronic systems have such low return water temperatures. In a primarily space-heating application (as opposed to a VAV reheat application), where hot water supply temperature reset is used, both the temperature of water delivered by the boiler and the thermal load met by the boiler both increase with colder outside temperatures. During the period when the majority of the load is met, the boiler is operating closer to its design delivery point (*i.e.,* at a higher temperature). DOE's calculation of seasonal efficiency reflected the boiler's operating conditions.

In responding to ACEEE's point on the joint proposal regarding prescriptive requirements for resetting the water supply temperature for residential boilers, DOE notes that there are many benefits to the application of supply water reset controls on commercial boilers as well. However, many of these benefits impact reduction in the total heating load served by the boiler (through reduction of losses in the distribution system, simultaneous heating and cooling in the building HVAC hydronic and supply air reheat systems) rather than a change in the boiler efficiency. Other benefits from supply water reset controls include reducing both cycling losses in non-modulating boilers and, to a lesser extent, shell and standby losses, which would accrue to both condensing and non-condensing boilers similarly, but are most significant at low load conditions.

Burnham asked whether the simulations used in the analysis included supply temperature reset in condensing boilers and did not include supply temperature reset for non-condensing boilers. (Burnham, Public Meeting Transcript, No. 12 at p. 63) Burnham also wanted to know if these simulations included distribution losses. *Id.* DOE clarified at the public meeting that the original FLEOH simulation analysis did not directly account for the impact of supply temperature reset on boiler efficiency. DOE further clarifies here that hydronic system distribution losses were not part of the original building simulations used to develop the FLEOH metrics, but that the FLEOH development did include estimates of heat used internally in the boiler to offset standby loss impacts. As with residential boilers, DOE recognizes that there are significant benefits to hot water supply temperature reset in buildings. However, DOE does not have authority to mandate supply temperature reset controls as part of a federal efficiency standard.

Commenting on the discussion on the impact of water temperature reset, AHRI stated that they were in the process of developing rules for commercial boiler manufacturers to provide additional information on how boiler models will operate at different inlet water temperatures. AHRI indicated that the professional designers of commercial hydronic systems want that type of information because there may be a broad range of ''design conditions'' depending on commercial application. AHRI commented that they have an internal group working on this issue within the certification program to help ensure certification to the federal requirements and uniformity between other information [regarding performance at varying conditions] manufacturers provide to their customers. (AHRI, Public Meeting Transcript, No. 12 at pp. 61–63)

DOE estimated the national energy impacts of higher efficiency equipment by: (1) Mapping climate locations onto regions; and (2) estimating the fraction of each year's national equipment shipments (by product category) within market segments, as defined by a representative building type within a particular region of the United States. Seven representative building types were used, including: Assembly, Education, Food Service, Lodging, Office, Retail, and Warehouse buildings. The estimated allocation of national boiler shipments to market segments was based on information from the 2003 Commercial Buildings Energy Consumption Survey (CBECS) [12] and the relative fraction of respondents reporting the use of boilers in commercial building floor space within each market segment.

DOE developed the annual energy consumption estimates for commercial boilers for each of seven key commercial building types in 11 geographic regions and at each efficiency level. Chapter 4 of the final rule TSD provides additional details on the energy use characterization analysis.

F. Life-Cycle Cost and Payback Period Analyses

DOE conducted the LCC and PBP analyses to estimate the economic impacts of potential standards on individual customers of commercial packaged boilers. In the March 2009 NOPR, DOE explained the development of these analyses for commercial packaged boilers. 74 FR 12029–32 DOE used the same spreadsheet models to evaluate the LCC and PBP for the final rule as it used for the NOPR; however, DOE updated certain specific inputs to the models. Details of the spreadsheet model and of all the inputs to the LCC and PBP analyses are in chapter 5 of the final rule TSD. DOE conducted the LCC and PBP analyses using a spreadsheet model developed in Microsoft Excel for Windows 2003.

The LCC is the sum of the total installed cost (taking into account contractor cost, sales taxes, distribution chain markups, and installation cost) and operating expenses (energy, repair, and maintenance costs) over the equipment lifetime, with all costs discounted back to the purchase date. Because DOE is considering both the efficiency levels in ASHRAE Standard 90.1–2007 and more-stringent efficiency levels, the date on which an amended energy conservation standard would become effective depends on the efficiency level ultimately adopted. To fairly compare the LCC and PBP for both the ASHRAE Standard 90.1–2007 levels and higher efficiency levels, DOE presumed that the purchase year for the LCC calculation is 2014, the earliest year in which DOE can establish an amended energy conservation level at an efficiency level more stringent than the ASHRAE Standard 90.1–2007 efficiency level. For each efficiency level analyzed, the LCC analysis required input data for the total installed cost of the equipment, the operating costs, including energy, repair

[12] Energy Information Administration (2003). Available at: *http://www.eia.doe.gov/emeu/cbecs/contents.html.*

and maintenance costs, and the discount rate. To compute each LCC, DOE discounted all future operating costs to the time of purchase and summed them over the lifetime of the equipment.

The PBP estimates the amount of time it would take the customer to recover the incremental increase in the purchase price of more-efficient equipment through lower operating costs. The PBP is the change in purchase price divided by the change in annual operating cost that results from the standard. DOE expresses this period in years. However, unlike the LCC, which uses a stream of operating expenses, including energy expenses, the PBP is defined using a single year's annual expenses. By convention, DOE uses the first year's operating expenses in the PBP calculation.

Recognizing that each business that uses commercial packaged boiler equipment is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations assuming a one-to-one correspondence between business types and market segments (characterized as building types) for customers located in seven types of commercial buildings. DOE developed discount rates appropriate for the customers in each building type and used the estimated annual energy use for each commercial packaged boiler unit described in section V.E. Because energy use of commercial packaged boilers is sensitive to climate and building usage, DOE's analysis included variation by State and building type. Aside from energy use, other important factors influencing the LCC and PBP analyses are energy prices, installation costs, equipment distribution markups, and sales tax. DOE used weighting factors representing fractional boiler sales by state and building type to generate national average LCC savings and PBP for each efficiency level.

DOE conducted the LCC and PBP analyses using a commercially-available spreadsheet model. This spreadsheet accounts for variability in energy use, installation costs, maintenance costs and energy costs, and uses weighting factors for shipments to different building types and to States to generate national LCC savings and PBP statistics by efficiency level. The results of DOE's LCC and PBP analyses are summarized in section VI and described in detail in chapter 5 of the final rule TSD.

Table V.2 summarizes the inputs and key assumptions DOE used in the LCC and PBP analysis and shows how DOE modified these inputs and key assumptions for the final rule. The changes in the input data and the discussion of the overall approach to the LCC analysis are provided in more detail in chapter 5 of the final rule TSD.

TABLE V.2—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Inputs	NOPR description	Changes for final rule
Affecting Installed Costs		
Equipment Price	Equipment price was derived by multiplying contractor cost (from the engineering analysis) by mechanical and general contractor markups as needed plus sales tax from the markups analysis.	None.
Installation Cost	Installation cost includes installation labor, installer overhead, and any miscellaneous materials and parts, derived from *RS Means CostWorks 2007*.[13] DOE added additional costs to reflect the installation of near condensing and condensing boilers at efficiency levels more stringent than ASHRAE Standard 90.1–2007 efficiency levels. These costs include control modifications, stainless steel flues, and condensate pumps and piping to remove condensate.	Modified installation costs to reduce incremental control costs charged at condensing equipment levels. Also removed costs for condensate pump below condensing levels, but retained condensate drain costs for near condensing levels (where corrosion resistant flues are required).
Affecting Operating Costs		
Annual Energy Use	DOE derived annual energy use using FLEOH data for commercial boilers combined with thermal efficiency estimates for each boiler efficiency level analyzed. DOE did not incorporate differences in annual electricity use by efficiency level. DOE used State-by-State weighting factors to estimate the national energy consumption by efficiency level.	None.
Fuel Prices	DOE developed average commercial natural gas and fuel oil prices for each State using EIA's State Energy Database Data for 2006 for natural gas and oil price data.[14] DOE used AEO2008 energy price forecasts to project oil and natural gas prices into the future.	Updated State Energy Database Data for natural gas and fuel oil prices to 2007 data (most recent available). Used AEO2009 energy price forecasts (April 2009 Reference Case incorporating AARA).
Maintenance Cost	DOE estimated annual maintenance costs for commercial boilers based on MARS 8 Facility Cost Forecast System Database[15] for commercial boilers. Annual maintenance cost did not vary as a function of efficiency.	None.

TABLE V.2—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES—Continued

Inputs	NOPR description	Changes for final rule
Repair Cost	DOE estimated the annualized repair cost for baseline efficiency commercial boilers based on cost data from MARS 8 Facility Cost Forecast System Database for commercial boilers. DOE assumed that repair costs would vary in direct proportion with the MSP at higher efficiency levels because it generally costs more to replace components that are more efficient.	None.
Affecting Present Value of Annual Operating Cost Savings		
Equipment Lifetime	DOE estimated equipment lifetime assuming a 30-year lifespan for all commercial boilers based on data published by ASHRAE.	None.
Discount Rate	Mean real discount rates for all buildings range from 2.3 percent for education buildings to 5.9 percent for retail building owners.	None.
Analysis Start Year	Start year for LCC is 2014, which is four years after the publication of the final rule for amended energy conservation standards higher than ASHRAE.	None.
Analyzed Efficiency Levels		
Analyzed Efficiency Levels	DOE analyzed the baseline efficiency levels (ASHRAE Standard 90.1–2007) and up to four higher efficiency levels for all ten equipment classes. See the engineering analysis for additional details.	None.

In response to the methodology presented in the March 2009 NOPR, DOE received comments on the installation cost assumptions used in the LCC analysis. Regarding the installation costs assumptions, ACEEE asked whether DOE assumed that commercial customers did not replace the control package for the lowest efficiency boilers with one specific to that boiler. ACEEE further stated since one-third of the commercial packaged boiler shipments went to new construction, it would seem that these boilers would have to be installed with a controls package. In addition, ACEEE asked whether the costs of controls should exist for a replacement market given the fraction of boilers that would be shipped there even without controls. ACEEE questioned an assumption that there are no control costs for the lowest-efficiency boilers. (ACEEE, Public Meeting Transcript, No. 12 at p. 72)

DOE responded to ACEEE at the public meeting that it did not necessarily assume explicitly that there were no controls shipped with the boiler, but that the analysis did include a differential control cost for the higher-efficiency boilers.

AHRI commented that they were not aware of any data to indicate what the differences in control costs might be for higher efficiency boilers, but commented that there probably is going to be some type of control to monitor and signal the boiler that it is getting rid of the condensate and that this would be a control you wouldn't have otherwise. (AHRI, Public Meeting Transcript, No. 12 at pp. 73–74) AHRI also asked if DOE included any factor to account for possible requirements to treat the boiler condensate.

For the final rule analysis, DOE reviewed and modified the assumptions for control costs resulting in a reduction in the control cost differential for the condensing boiler to $250. In addition, DOE reviewed the assumptions for costs of condensate pumps generally. For the March 2009 NOPR, condensate pumps were incorporated for both condensing and near condensing boiler efficiency levels. Review of data on options for boiler installations indicated that condensate pumps would be common for many fully condensing boilers where condensate is generated in the boiler itself, but other means could be incorporated to help alleviate condensation directly in the flue that occurs with near condensing efficiency levels. DOE included the cost for condensate drainage for all near condensing and condensing efficiency levels (levels for which a corrosion resistant flue was also incorporated).

With regard to the possible costs for condensate treatment, DOE is aware that some jurisdictions may have requirements for condensate treatment and that there are commercial products designed to provide this treatment, but did not have sufficient information on the extent that such requirements exist across the U.S. to estimate typical installation costs and ongoing maintenance costs for such treatment. Consequently, DOE did not adjust the maintenance (or repair) costs from those used in the March 2009 NOPR. DOE acknowledges that to the extent that condensate treatment is required, these would be an additional installation and maintenance cost for the condensing efficiency levels.

Other modifications made to the LCC analysis were to update the fuel prices and fuel price forecast data. Fuel prices are needed to convert the gas or oil energy savings from higher-efficiency equipment into energy cost savings. Because of the variation in annual fuel consumption savings and equipment costs across the country, it is important to consider regional differences in electricity prices. DOE updated the average commercial natural gas and

[13] RS Means CostWorks 2007, R.S. Means Company, Inc. 2007. Kingston, Massachusetts (2007). Available at: *http://www.meanscostworks.com/*.

[14] Natural Gas Price and Expenditure Estimates by Sector, EIA, 2007. Available at: *http://www.eia.doe.gov/emeu/states/sep_fuel/html/fuel_pr_ng.html*. 2007 Distillate Fuel Price and Expenditure Estimates by Sector, EIA, 2007. Available at: *http://www.eia.doe.gov/emeu/states/hf.jsp?incfile=sep_fuel/html/fuel_pr_df.html*.

[15] MARS 8 Facility Cost Forecast System Database, Whitestone Research, 2008. Washington, DC. Available at: *http://www.whitestoneresearch.com/mars/index.htm*.

commercial fuel oil prices at the State level using the latest available Energy Information Administration (EIA) data (2007). These data were converted to 2008$ using a Gross Domestic Product (GDP) price inflator. The effective 2007 prices (in 2008$) range from approximately $7.71 per million Btu to approximately $27.96 per million Btu for natural gas, and from approximately $15.21 per million Btu to approximately $18.04 per million Btu for commercial fuel oil. To account for variation in fuel costs occurring in different kinds of businesses, DOE followed the same procedure used in the NOPR to adjust the state average fuel price to business-type specific fuel prices, which was to use the ratio of the average fuel costs for that business type to the commercial sectors as a whole, as provided in EIA's 2003 CBECS [16] data set.

DOE also updated the fuel price forecast data to use the most recent EIA/AEO forecasts. EIA updated the AEO forecasts in April 2009 to reflect the provisions of the American Recovery and Reinvestment Act (ARRA) enacted in mid-February 2009. The reference case in the recently published AEO2009, which reflected laws and regulations in effect as of November 2008, does not include ARRA. The need to develop an updated reference case following the passage of ARRA also provided the EIA with an opportunity to update the macroeconomic outlook for the United States and global economies, which have been changing at an unusually rapid rate in recent months.

A very significant spike in oil prices in 2008, in conjunction with a change in assumptions in the April AEO2009 reference case meant it was not possible to use both the 2007 state oil cost data and the future oil fuel price index to directly generate future national commercial average fuel-oil prices that reasonably match those in the AEO2009 forecast. To provide a more closely matched estimate, DOE applied an adjustment factor to the fuel prices to both starting point gas and oil prices such that the national average commercial prices from 2012–2030 would match the AEO forecasts in constant years dollars, but retain the state-by-state variation reflected in state pricing data. As was done for the NOPR, DOE extrapolated the trend in fuel prices between 2020 and 2030 of the forecast to establish prices for the years from 2031 to 2042 for the LCC analysis.

See chapter 5 of the final rule TSD for further details on the LCC and PBP analysis and assumptions.

G. Shipments Analysis

The shipments analysis develops future shipments for each class of commercial packaged boiler based on current shipments and equipment life assumptions, and takes into account the existing stock and expected growth of buildings using commercial packaged boilers. DOE assumed the relative distribution of shipments by size and boiler equipment class would resemble that of current shipments. In the March 2009 NOPR, DOE explained the development of the shipment analysis for commercial packaged boilers 74 FR 12033.

DOE received several comments on the assumptions used in the shipments analysis for the NOPR. On the distribution of equipment lifetimes, AHRI commented that in some regions of the country, emissions regulations may promote early replacements of boilers, but did not provide data on the frequency that this may occur or the impact that this may have on the distribution for boiler lifetimes. (AHRI, Public Meeting Transcript, No. 12 at p. 86) ACEEE commented that there is a trend toward replacements of larger boilers with trains of smaller boilers, but admitted to not having quantitative numbers to describe the trend. (ACEEE, Public Meeting Transcript, No. 12 at p. 80) ACEEE also commented that boilers are rated on input capacity, but since the relationship between input and output capacity changes with efficiencies, for a fixed output, the input capacities required for the market will have a downward trend based on a change in efficiency considered alone. In addition, ACEEE asserted that reductions in the degree of historical [unnecessary] oversizing might be reduced in the future, which would further result in a reduction in typical boiler size. (ACEEE, Public Meeting Transcript, No. 12 at p. 81)

In responding to ACEEE at the public meeting, AHRI agreed that in fact there are replacement situations where the use of trains of modular or stage boilers makes sense today. AHRI also pointed out that a target of ASHRAE 90.1 has been to achieve better sizing and better system design as part of the overall goal to reduce energy consumption in commercial buildings. AHRI did not have an idea of how much effect these replacement situations would really have on shipments. (AHRI, Public Meeting Transcript, No. 12 at p. 83)

In response to ACEEE regarding the natural reduction in input capacity as a function of higher efficiency equipment, DOE notes that the shipments model starting point, as well as the output of the model, is the number of boilers shipped, not the total input capacity of all shipments. Furthermore, the cost calculations developed in the engineering analysis and subsequently used in the analysis are based on the output capacity of the boiler. The sum total of output capacity and shipments is not affected by the change in efficiency brought about by standards. With regard to the other comments, given the lack of sufficient quantitative data on the impact that these trends may have on shipments by equipment size or class that would be needed to calibrate a revised model, DOE did not revise the shipments model methodology from that of the March 2009 NOPR.

DOE did update the model to reflect new estimates of future building new construction and resulting building stock in each year based on the April 2009 AEO2009 reference case. DOE reports the revised shipment forecasts for the boiler market for selected years from 2012 to 2042 for the base case in Table V.3 below.

[16] EIA's Commercial Buildings Energy Consumption Survey, Energy Information Agency. Public use microdata available at: *http://www.eia.doe.gov/emeu/cbecs/cbecs2003/public_use_2003/cbecs_pudata2003.html.*

Table V.3. Base-Case Shipments Forecast for Commercial Boilers

Equipment	Thousands of Units Shipped by Year and Equipment Class								
	2012	2015	2020	2025	2030	2035	2040	2042	Cumulative Shipments (2012-2042)
Small gas-fired hot water	7110	7377	7832	8364	9420	11019	13023	13812	292,525
Small gas-fired steam all except natural draft	2409	2500	2654	2834	3192	3734	4413	4680	99,120
Small gas-fired steam natural draft	3702	3841	4078	4355	4905	5737	6780	7191	152,306
Small oil-fired hot water	1998	2073	2201	2350	2647	3096	3659	3881	82,197
Small oil-fired steam	3349	3475	3690	3940	4438	5191	6135	6506	137,801
Large gas-fired hot water	1146	1189	1262	1348	1518	1776	2099	2226	47,142
Large gas-fired steam all except natural draft	2086	2164	2298	2454	2764	3233	3821	4052	85,823
Large gas-fired steam natural draft	2674	2774	2945	3145	3542	4144	4897	5194	109,999
Large oil-fired hot water	558	579	615	657	740	865	1022	1084	22,967
Large oil-fired steam	4407	4572	4855	5184	5839	6830	8072	8561	181,317
Total	29440	30544	32429	34629	39004	45625	53920	57188	1,211,199

H. National Impact Analysis—National Energy Savings and Net Present Value Analysis

The national impacts analysis evaluates the impact of a proposed energy conservation standard from a national perspective rather than from the customer perspective represented by the LCC. This analysis assesses the national energy savings (NES) and national net present value (NPV) of the commercial customer costs and savings that are expected to result from amended standards at the analyzed efficiency levels. For the final rule analysis, DOE used the same spreadsheet model used in the March 2009 NOPR to calculate the energy savings and the national economic costs and savings from new standards, but with updates to specific input data.

For each efficiency level analyzed, DOE calculated the NPV and NES for adopting more-stringent standards than the efficiency levels specified in ASHRAE Standard 90.1–2007. The NES refers to cumulative energy savings from 2012 through 2042. DOE calculated new energy savings in each year relative to a base case, defined to include DOE adoption of the efficiency levels specified by ASHRAE Standard 90.1–2007. The NPV refers to cumulative monetary savings. DOE calculated net monetary savings for higher standards in each year relative to the base case as the total operating cost savings minus the increases in total installed cost. Cumulative savings are the sum of the annual NPV over the specified period. DOE accounted for operating cost savings until 2085, when 95 percent of all the equipment installed in 2042 should be retired.

Table V.4 summarizes the inputs to the NES spreadsheet model along with a brief description of the data sources. The results of DOE's NES and NPV analysis are summarized in section VI.B.2 and described in detail in chapter 7 of the final rule TSD.

TABLE V.4—SUMMARY OF NES AND NPV MODEL INPUTS

Inputs	Description	Changes for final rule
Shipments	Annual shipments from shipments model (see chapter 6 of the final rule TSD).	Used updated shipment estimates based on AEO2009 reference case building stock forecasts.

TABLE V.4—SUMMARY OF NES AND NPV MODEL INPUTS—Continued

Inputs	Description	Changes for final rule
Effective Date of Standard	2014 for adoption of a more-stringent efficiency level than those specified by ASHRAE Standard 90.1–2007. 2012 for adoption of the efficiency levels specified by ASHRAE Standard 90.1–2007.	No change.
Base Case Efficiencies	Distribution of base-case shipments by efficiency level	No change.
Standard Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards-case annual shipment-weighted market shares remain the same as in the base case and each standard level for all efficiencies above the efficiency level being analyzed. All other shipments are at the efficiency level.	No change.
Annual Energy Use per Unit	Annual national weighted-average values are a function of efficiency level. (See chapter 4 of the final rule TSD.).	No change.
Total Installed Cost per Unit	Annual weighted-average values are a function of efficiency level. (See chapter 5 of the final rule TSD.).	Modified to reflect changes in installation costs from LCC analysis.
Repair Cost per Unit	Annual weighted-average values increase with manufacturer's cost level. (See chapter 5 of the final rule TSD.).	No change.
Maintenance Cost per Unit	See chapter 5 of the final rule TSD	No change.
Escalation of Fuel Prices	*AEO2008* forecasts (to 2030) and extrapolation for beyond 2030. (See chapter 5 of the final rule TSD.).	*Modified to reflect April 2009 AEO2009 reference case forecasts.*
Site-Source Conversion	Based on average annual site-to-source conversion factor for natural gas from *AEO2008*.	Based on average annual site-to-source conversion factor for natural gas from *AEO2009* reference case.
Discount Rate	3 percent and 7 percent real	No change.
Present Year	Future costs are discounted to 2008	No change.

DOE received no comments on the general methodology and the results for the NES and NPV analysis. As a result, DOE retained the same methodology as was used in the NOPR for the final rule. Changes to these results from the NOPR are due to changes in the development of national average inputs to the NES and NPV analysis as a result of the revisions to the LCC and shipments calculations.

I. Environmental Assessment

DOE prepared an environmental assessment (EA) which assesses the impacts of the proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). This EA includes a concise examination of the impacts of emission reductions likely to result from the proposed standards for commercial packaged boilers and water-cooled and evaporatively cooled commercial packaged air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h. The EA has been incorporated as chapter 8 in the final rule TSD.

Specifically, DOE estimated the reduction in total emissions of carbon dioxide (CO_2), nitrogen oxides (NO_X) and sulfur dioxide (SO_2). A fourth pollutant, mercury (Hg), is emitted in only trace amounts by the equipment covered in this analysis that further analysis of Hg in this EA would be uninformative; as such, DOE does not discuss Hg emissions in this EA.

1. Sulfur Dioxide

Sulfur dioxide is a chemical compound that is produced by various natural and industrial processes and is a key contributor to acid rain. The Clean Air Act Amendments of 1990 set an SO_2 emissions cap on all power generation, but permitted flexibility among generators through the use of emissions allowances and tradable permits. This SO_2 trading process (sometimes called ''cap and trade'') does not, however, cover commercial packaged boilers. The EPA's New Source Performance Standards (NSPS) limit, among other things, SO_2 emissions from boilers built after a certain date. In particular, 40 CFR part 60 subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, requires that small industrial-commercial-institutional steam generating units constructed, modified, or reconstructed after June 9, 1989, must limit the allowable sulfur content in fuel oil to 0.5 weight percent for any steam-generating unit that has a maximum design heat input capacity of 100 million British thermal units (Btu) per hour. (40 CFR 60.40c–60.48c) Commercial packaged boilers that have a maximum design heat input capacity of 100 million Btu per hour would be an extremely small subset of all boilers being considered in this rule. Consequently, there is a direct SO_2 environmental benefit from a reduction in fuel consumption resulting from the higher efficiency standards for commercial packaged boilers being adopted in today's final rule.

2. Nitrogen Oxides

Nitrogen oxides, or NO_X, are the generic term for a group of highly reactive gases, all of which contain nitrogen and oxygen in varying amounts. Nitrogen oxides form when fossil fuel is burned at high temperatures, as in a combustion process, and are considered a criteria pollutant under the Clean Air Act. The primary man-made sources of NO_X emissions are motor vehicles, electric utilities, and other industrial, commercial, and residential sources that burn fossil fuels. NO_X emissions from 28 eastern States and the District of Columbia (DC) are limited under the Clean Air Interstate Rule, published in the **Federal Register** on May 12, 2005. Although the rule has been remanded to the EPA by the D.C. Circuit Court, it will remain in effect until it is replaced by a rule consistent with the Court's opinion in *North Carolina* v. *EPA*.[17] Under CAIR, States must achieve

[17] On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *North Carolina* v. *Environmental Protection Agency,* in which the Court vacated the CAIR rule. 531 F.3d 896 (D.C. Cir. 2008). However, in a December 23, 2008 opinion, the same panel of the D.C. Circuit reinstated the CAIR rule pending

the required emission reductions using one of two compliance options: (1) Meet an emissions budget for each regulated State by requiring power plants to participate in an EPA-administered interstate cap-and-trade system that caps emissions in two stages; or (2) meet an individual State emissions budget through measures of the State's choosing. In general, however, CAIR basically covers two general classes of NO_X emitters: (1) Stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving generators with nameplate capacity of more than 25 MW of electricity and producing that electricity for sale; and (2) any unit that has a maximum design heat input rate of greater than 250 million Btu/h (40 CFR 96.4). Commercial packaged boilers have a maximum design heat input rate of less than 250 million Btu/h and are not used for commercial power production. Hence, requirements of the CAIR do not apply to commercial packaged boilers. Consequently, there is a direct NO_X environmental benefit from a reduction in fuel consumption resulting from the higher efficiency standards for commercial packaged boilers.

The EA assesses environmental impacts from alternate standard levels analyzed for commercial packaged boilers based on the results of the national energy savings analysis (see chapter 7). Standards for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h were also considered in this rule. However, since no products could be identified on the market in this class, no subsequent energy or environmental impacts were considered in this EA. For commercial packaged boilers, DOE calculated emission reductions using emission factors appropriate to commercial boilers that use natural gas or fuel oil as fuel sources. The emissions factors provide typical ratios of emissions for SO_2, NO_X, and CO_2 per unit of natural gas or fuel oil energy consumed. DOE multiplied each emission factor, respectively, by the annual energy savings for each class of commercial packaged boiler as developed in the NES for the final rule. The annual emission reductions were then summed over the period from 2012–2042 separately for each class. The resulting emission reductions are shown in section VI.

J. Monetizing Carbon Dioxide and Other Emissions Impacts

DOE also calculated the possible monetary benefit of CO_2, NO_X, and SO_2 emissions reductions. Cumulative monetary benefits were determined using discount rates of 3 and 7 percent. DOE monetized reductions in CO_2 emissions stemming from the standards adopted in this final rule using 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.

DOE monetized reductions in SO_2 emissions using a ranges estimates of monetized benefits that could be attributed to the reduction of SO_2 emissions from commercial packaged boilers. At one end, DOE used the annual estimates of an SO_2 trading price as developed in the National Energy Modeling System (NEMS) electricity market model for the western and eastern U.S. This model estimates a trading price for SO_2 in the utility markets, and, while not directly applicable to commercial packaged boilers, it reflects a market value for the cost of reducing SO_2 emissions into the atmosphere. As DOE is interested in a national estimate, it used a simple average of the trading prices from the eastern and western electricity market models for the period from 2012–2030, and extrapolated the prices out through 2042. The range in SO_2 costs from this source varied both by year and region from $86 to $1,012 (2007$). At the higher end, DOE used an estimate of environmental damage costs of $7,300 per ton of SO_2 from stationary sources, measured in 2001$ or $8,542 per ton in 2007$. These low and high values were in turn multiplied by the reduction in emissions of SO_2 estimated for the period from 2012–2042.

DOE estimated the national monetized benefits of NO_X reductions associated with this rulemaking 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 $3,800 per ton of NO_X from stationary sources, measured in 2001$, or a range of $432 per ton to $4,441 per ton in 2007$.

The resulting estimates of the present value of monetary benefits associated with the national reduction of CO_2, NO_X, and SO_2 emissions resulting from adoption of standards for commercial packaged boilers at the ASHRAE 90.1–2007 efficiency levels are shown in section VI. In addition, estimates of the additional benefits for adopting standards higher than the ASHRAE 90.1–2007 efficiency levels are also provided in section VI.

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. DOE has chosen to report these benefits separately from the net benefits of energy savings, but considered these benefits when weighing the benefits and burdens of standards.

K. Other Issues

1. Impact of Standards on Natural Gas Prices

In the March 2009 NOPR public meeting, EarthJustice pointed out that DOE had, in certain residential rulemakings, begun to calculate the potential impact of energy efficiency standards on natural gas prices and encouraged DOE to do something similar in the ASHRAE products rulemaking analysis. (EarthJustice, Public Meeting Transcript, No. 13 at p. 61)

In response to these comments, DOE undertook a further review of the potential impact of commercial packaged boiler energy efficiency standards on natural gas prices. A review of the economic literature indicates that there is support for the idea that an impact will occur and that that impact would result in a reduction in overall natural gas prices. DOE examined two preliminary analyses of the effect that a reduction in natural gas usage due to efficiency standards would have on natural gas prices. These were analyses and results published in the 2007 furnace and boiler final rule (72 FR 65136, 65152–54 (Nov. 19, 2007)) and in the preliminary analysis documented in the preliminary TSD for standards for residential water heaters. The natural gas price analysis for the furnaces and boilers rulemaking was conducted using a version of the 2007 NEMS–BT that was modified to account for energy savings associated with possible standards for residential gas furnaces, and the price analysis for the residential water heaters standards rulemaking was conducted using the 2008 NEMS–BT.

The preliminary analyses in both cases estimated that gas demand reductions resulting from more stringent minimum energy conservation standards would reduce the U.S.

EPA's compliance with its July 11, 2008 ruling. 550 F.3d 1176 (D.C. Cir. 2008) (*remand of vacatur*). As such, CAIR's trading programs and target deadlines remain in place at present; however, the long term prospects for and shape of those trading programs are unknown.

average wellhead natural gas price. An inverse elasticity was calculated in both studies, relating a percentage change in the average wellhead natural gas price to a percentage reduction in total annual natural gas consumption. In the furnace and boiler rule, DOE estimated that this inverse elasticity was approximately 0.9 percent. In the residential water heater preliminary analysis, DOE estimated an inverse elasticity of approximately 0.8 percent. Given the closeness of these two figures, and the corresponding similarity in energy end-use profile expected for space heating equipment, DOE chose to estimate the impact for commercial packaged boilers based on the elasticity estimated for residential furnaces. DOE's analysis was based on the impact calculated from adopting the highest efficiency level analyzed for the class of small gas fired hot water boilers.

The condensing efficiency level for small gas fired hot water boilers showed an estimated savings of 0.223 quads over the period from 2012–2042. DOE estimated the impact that the stream of energy savings would have on natural gas prices over the same period. Using this time period, DOE estimated that the average price changes amounted to a decrease in the wellhead price for natural gas of 0.25 cents per million Btu. Analysis done for the furnace and boiler rule showed that while changes in price were both positive and negative depending on sector, the effect on the wellhead price for natural gas was a decrease.

In previous studies, the projected change in the natural gas price varies among the end use sectors. For example, in the analysis for residential furnaces, DOE estimated that natural gas prices would decrease for the industrial and electric power sectors, and increase for residential consumers. The increase in the residential price is believed to occur because the fixed charges (*e.g.,* transmission infrastructure costs) are spread over fewer million Btu of gas sales in the standards case, thus placing upward pressure on the average price per million Btu. A similar pattern could be expected to occur in the commercial sector.

Although the estimated reduction in average natural gas prices is small, the estimated economy-wide savings in natural gas expenditures over the 2012–2042 forecast period have an estimated net present value of $0.29 billion at a seven-percent discount rate.

In addition to conducting its own analysis using NEMS, DOE reviewed the results of: (1) Studies that used NEMS to investigate the price impact of reductions in natural gas demand, and (2) studies that used other energy-economic models to investigate the price impact of substantial change in natural gas demand. While the results vary considerably among the different studies, they generally show a price response similar to or larger than that shown by DOE's NEMS analysis.

In the short run, DOE's preliminary analysis indicates that consumer savings from lower natural gas prices would be offset by declines in gas producer revenue. In the long run, the previous analyses indicate that the reduction in natural gas prices mainly results from changes in gas extraction costs. Since there is only a limited supply of low-cost, conventional natural gas sources, natural gas extraction costs rise over time as these low-cost sources are depleted. Reduced gas demand puts downward pressure on extraction costs and prices by delaying the depletion of the low-cost reserves and the shift toward higher-cost sources. However, as changes in extraction costs are projected to occur in 2030 and beyond, the uncertainty of the actual savings that would be realized is increased.

Based on the discussed analysis, DOE recognizes that there is uncertainty about the magnitude, distribution, and timing of the costs, benefits, and net benefits within the economy. DOE's previous analyses indicated that the prices of natural gas to the end use consumers (residential) would increase slightly, due to fixed costs in the distribution of natural gas to the consumer becoming a higher fraction of the total cost. A similar effect is possible in the commercial sector with commercial boilers. While DOE has not been able to estimate these potential effects, DOE anticipates the effect will be small since the magnitude of the gas price change is small (but likely to vary as the natural gas savings increases).

Similarly, DOE is uncertain of the effects of the drop in natural gas on producers and distributors of natural gas. While their revenues and costs are expected to drop, it is uncertain whether they will drop in proportion over time. The supply side will likely experience revenue loss due to both the price changes and the reduction in gas sales that they will experience.

DOE considered the potential impact on natural gas prices in the establishment of the final standards, but because of the uncertainty of these impacts, and because DOE's analysis has not been subjected to public review, this factor had little impact on DOE's conclusion.

2. Effective Date of the Amended Energy Conservation Standards for Commercial Packaged Boilers

Generally, covered equipment must comply with the applicable standard if such equipment is manufactured or imported on or after a specified date. As explained in the March 2009 NOPR, DOE evaluated whether more-stringent efficiency levels than those in ASHRAE Standard 90.1–2007 would be technologically feasible and economically justified and result in a significant amount of additional energy savings. 74 FR 12003. Because DOE found that more stringent standards did not meet these requirements and is adopting energy conservation standards at the efficiency levels contained in ASHRAE Standard 90.1–2007, EPCA requires the standards to become effective ''on or after a date which is two years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES[NA] standard * * *''. (42 U.S.C. 6313(a)(6)(D)) Thus, for the equipment classes where a two-tier standard is set-forth, the effective date of the rulemaking depends on the effective date specified in ASHRAE Standard 90.1–2007. The effective date in ASHRAE Standard 90.1–2007 for commercial packaged boilers is March 2, 2010, for the initial efficiency level (which would require an effective date of March 2, 2012), and the effective date in ASHRAE Standard 90.1–2007 for the two commercial packaged boiler equipment classes with a tiered efficiency level is March 2, 2020 for the second tier efficiency level (which would require an effective date of March 2, 2022).

For analysis purposes, if DOE were to adopt a rule prescribing energy conservation standards higher than the efficiency levels contained in ASHRAE Standard 90.1–2007, EPCA states that any such standards ''shall become effective for products manufactured on or after a date which is four years after the date such rule is published in the **Federal Register**.'' (42 U.S.C. 6313(a)(6)(D)) DOE has applied this 4-year implementation period to determine the effective date of any energy conservation standard higher than the efficiency levels specified by ASHRAE Standard 90.1–2007 that might be prescribed in a future rulemaking. Thus, for products for which DOE might adopt a level more stringent than the ASHRAE efficiency levels, the rule would apply to products manufactured on or after July 2014, which is four years

from the date of publication of the final rule.[18]

Table V.5 presents the anticipated effective dates of an amended energy conservation standard for each equipment class for which DOE developed a potential energy savings analysis.

TABLE V.5—ANTICIPATED EFFECTIVE DATE OF AN AMENDED ENERGY CONSERVATION STANDARD FOR EACH EQUIPMENT CLASS OF COMMERCIAL PACKAGED BOILERS

Equipment class	Anticipated effective date for adopting the efficiency levels in ASHRAE standard 90.1–2007	Anticipated effective date for adopting more stringent efficiency levels than those in ASHRAE standard 90.1–2007
Small Gas-Fired Hot Water Commercial Packaged Boilers	2012	2014
Small Gas-Fired Steam, All Except Natural Draft Commercial Packaged Boilers	2012	2014
Small Gas-Fired Steam Natural Draft Commercial Packaged Boilers	Tier 1: 2012 Tier 2: 2022.	2014
Small Oil-Fired Hot Water Commercial Packaged Boilers	2012	2014
Small Oil-Fired Steam Commercial Packaged Boilers	2012	2014
Large Gas-Fired Hot Water Commercial Packaged Boilers	2012	2014
Large Gas-Fired Steam, All Except Natural Draft Commercial Packaged Boilers	2012	2014
Large Gas-Fired Steam Natural Draft Commercial Packaged Boilers	Tier 1: 2012 Tier 2: 2022.	2014
Large Oil-Fired Hot Water Commercial Packaged Boilers	2012	2014
Large Oil-Fired Steam Commercial Packaged Boilers	2012	2014

VI. Analytical Results for Commercial Packaged Boilers

A. Efficiency Levels Analyzed

Table VI.1 presents the baseline efficiency level and the efficiency levels analyzed for each equipment class of commercial packaged boilers subject to today's final rule. The baseline efficiency levels correspond to the efficiency levels specified by ASHRAE Standard 90.1–2007 for commercial packaged boilers. The efficiency levels above the baseline represent efficiency levels above those specified in ASHRAE Standard 90.1–2007 where equipment is currently available on the market.

TABLE VI.1—EFFICIENCY LEVELS ANALYZED

Equipment class	Representative capacity (*kBtu/h*)	Efficiency levels analyzed
Small gas-fired hot water	800	Baseline—80% E_T 82% E_T 84% E_T 86% E_T Condensing—92% E_T
Small gas-fired steam, all except natural draft	800	Baseline—79% E_T 80% E_T 81% E_T 82% E_T 83% E_T
Small gas-fired steam natural draft	800	Baseline—77% E_T 78% E_T 79% E_T 80% E_T
Small oil-fired hot water	800	Baseline—82% E_T 84% E_T 86% E_T 88% E_T
Small oil-fired steam	800	Baseline—81% E_T 82% E_T 83% E_T 85% E_T
Large gas-fired hot water	3,000	Baseline—82% E_C 83% E_C 84% E_C 85% E_C Condensing—95% E_C

[18] Since ASHRAE published Standard 90.1–2007 on January 10, 2008, EPCA requires that DOE publish a final rule adopting more-stringent standards than those adopted in Standard 90.1–2007 within 30 months of ASHRAE action (*i.e.,* by July 2010). Thus, four years from July 2010 would be July 2014, which would be the anticipated effective date for DOE adoption of more-stringent standards.

TABLE VI.1—EFFICIENCY LEVELS ANALYZED—Continued

Equipment class	Representative capacity (*kBtu/h*)	Efficiency levels analyzed
Large gas-fired steam, all except natural draft	3,000	Baseline—79% E_T 80% E_T 81% E_T 82% E_T 83% E_T
Large gas-fired steam natural draft	3,000	Baseline—77% E_T 78% E_T 79% E_T 80% E_T 81% E_T
Large oil-fired hot water	3,000	Baseline—84% E_C 86% E_C 87% E_C 88% E_C
Large oil-fired steam	3,000	Baseline—81% E_T 82% E_T 83% E_T 84% E_T 86% E_T

B. Economic Justification and Energy Savings

1. Economic Impacts on Commercial Customers

To evaluate the economic impact of the efficiency levels on commercial customers, DOE conducted an LCC analysis for each efficiency level. More efficient commercial packaged boilers would affect these customers in two ways: (1) Annual operating expense would decrease; and (2) purchase price would increase. Inputs used for calculating the LCC include total installed costs (*i.e.,* equipment price plus installation costs), operating expenses (*i.e.,* annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs), equipment lifetime, and discount rates.

The output of the LCC model is a mean LCC savings for each equipment class, relative to the baseline commercial packaged boiler efficiency level. The LCC analysis also provides information on the percentage of customers that are negatively affected by an increase in the minimum efficiency standard.

DOE also performed a PBP analysis as part of the LCC analysis. The PBP is the number of years it would take for the customer to recover the increased costs of higher-efficiency equipment as a result of energy savings based on the operating cost savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. Chapter 5 of the final rule TSD provides detailed information on the LCC and PBP analyses.

DOE's LCC and PBP analyses provided five key outputs for each efficiency level above the baseline (*i.e.,* efficiency levels more stringent than those in ASHRAE Standard 90.1–2007), reported in Table VI.2 through Table VI.11. The first three outputs are the proportion of commercial boiler purchases where the purchase of a commercial packaged boiler that is compliant with the amended energy conservation standard creates a net LCC increase, no impact, or a net LCC savings for the customer. The fourth output is the average net LCC savings from standard-compliant equipment. The fifth output is the average PBP for the customer investment in standard-compliant equipment. The sixth output is the increase in total installed cost from standard-compliant equipment.

TABLE VI.2—SUMMARY LCC AND PBP RESULTS FOR SMALL GAS-FIRED HOT WATER BOILERS, 800 kBTU/h OUTPUT CAPACITY

Small gas-fired hot water	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_t)	82%	84%	86%	92%
Equipment with Net LCC Increase (%)	9	21	42	64
Equipment with No Change in LCC (%)	77	48	25	18
Equipment with Net LCC Savings (%)	14	31	33	19
Mean LCC Savings ($)	$1,700	$3,239	$1,329	($4,760)
Mean PBP (years)	25.4	30.6	42.7	56.7
Increase in Total Installed Cost ($)	$3,364	$5,526	$9,045	$14,323

*Numbers in parentheses indicate negative LCC savings.

TABLE VI.3—SUMMARY LCC AND PBP RESULTS FOR SMALL GAS-FIRED STEAM, ALL EXCEPT NATURAL DRAFT, 800 kBTU/h OUTPUT CAPACITY

Small gas-fired steam, all except natural draft	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_t)	80%	81%	82%	83%
Equipment with Net LCC Increase (%)	27	58	71	73
Equipment with No Change in LCC (%)	64	19	10	7
Equipment with Net LCC Savings (%)	9	23	19	20
Mean LCC Savings ($)	($870)	($674)	($2,423)	($3,064)
Mean Payback Period (years)	41.6	41.8	50.7	50.8
Increase in Total Installed Cost ($)	$3,204	$4,946	$7,674	$9,831

* Numbers in parentheses indicate negative savings.

TABLE VI.4—SUMMARY LCC AND PBP RESULTS FOR SMALL GAS-FIRED STEAM NATURAL DRAFT BOILERS, 800 kBTU/h OUTPUT CAPACITY

Small gas-fired steam natural draft	Efficiency level		
	1	2	3
Thermal Efficiency (E_t)	78%	79%	80%
Equipment with Net LCC Increase (%)	44	35	43
Equipment with No Change in LCC (%)	32	22	3
Equipment with Net LCC Savings (%)	25	43	54
Mean LCC Savings* ($)	($50)	$1,657	$2,184
Mean PBP (years)	30.9	25.4	28.7
Increase in Total Installed Cost ($)	$2,875	$3,926	$5,562

* Numbers in parentheses indicate negative savings.

TABLE VI.5—SUMMARY LCC AND PBP RESULTS FOR SMALL OIL-FIRED HOT WATER BOILERS, 800 kBTU/h OUTPUT CAPACITY

Small oil-fired hot water	Efficiency level		
	1	2	3
Thermal Efficiency (E_t)	84%	86%	88%
Equipment with Net LCC Increase (%)	10	10	28
Equipment with No Change in LCC (%)	39	27	7
Equipment with Net LCC Savings (%)	51	63	65
Mean LCC Savings ($)	$4,902	$9,770	$11,482
Mean PBP (years)	16.5	17.5	24.0
Increase in Total Installed Cost ($)	$3,506	$5,912	$9,737

TABLE VI.6—SUMMARY LCC AND PBP RESULTS FOR SMALL OIL-FIRED STEAM BOILERS, 800 kBTU/h OUTPUT CAPACITY

Small oil-fired hot water	Efficiency level		
	1	2	3
Thermal Efficiency (E_t)	82%	83%	85%
Equipment with Net LCC Increase (%)	29	46	54
Equipment with No Change in LCC (%)	58	24	6
Equipment with Net LCC Savings (%)	13	30	40
Mean LCC Savings* ($)	($732)	$88	$864
Mean PBP (years)	35.1	33.7	35.0
Increase in Total Installed Cost ($)	$3,136	$4,739	$8,236

* Numbers in parentheses indicate negative savings.

TABLE VI.7—SUMMARY LCC AND PBP RESULTS FOR LARGE GAS-FIRED HOT WATER BOILERS, 3,000 kBTU/h OUTPUT CAPACITY

Large gas-fired hot water	Efficiency level			
	1	2	3	4
Combustion Efficiency (E_C)	83%	84%	85%	95%
Equipment with Net LCC Increase (%)	8	15	31	45
Equipment with No Change in LCC (%)	51	23	17	6

TABLE VI.7—SUMMARY LCC AND PBP RESULTS FOR LARGE GAS-FIRED HOT WATER BOILERS, 3,000 kBTU/h OUTPUT CAPACITY—Continued

Large gas-fired hot water	Efficiency level			
	1	2	3	4
Equipment with Net LCC Savings (%)	41	62	52	50
Mean LCC Savings ($)	$6,411	$11,303	$11,324	$13,271
Mean PBP (years)	15.3	19.3	28.7	38.3
Increase in Total Installed Cost ($)	$4,093	$7,742	$13,560	$37,293

TABLE VI.8—SUMMARY LCC AND PBP RESULTS FOR LARGE GAS-FIRED STEAM, ALL EXCEPT NATURAL DRAFT BOILERS, 3,000 kBTU/h OUTPUT CAPACITY

Large gas-fired steam, all except natural draft	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_t)	80%	81%	82%	83%
Equipment with Net LCC Increase (%)	4	4	3	3
Equipment with No Change in LCC (%)	61	26	23	20
Equipment with Net LCC Savings (%)	34	70	74	77
Mean LCC Savings ($)	$7,876	$18,144	$27,941	$37,065
Mean Payback Period (years)	11.8	8.8	8.0	7.8
Increase in Total Installed Cost ($)	$3,969	$5,638	$7,398	$9,423

TABLE VI.9—SUMMARY LCC AND PBP RESULTS FOR LARGE GAS-FIRED STEAM NATURAL DRAFT BOILERS, 3,000 kBTU/h OUTPUT CAPACITY

Large gas-fired steam natural draft	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_t)	78%	79%	80%	81%
Equipment with Net LCC Increase (%)	1	2	4	10
Equipment with No Change in LCC (%)	88	42	24	7
Equipment with Net LCC Savings (%)	12	55	72	83
Mean LCC Savings ($)	$9,531	$19,836	$28,016	$33,835
Mean Payback Period (years)	9.1	8.0	9.0	11.0
Increase in Total Installed Cost ($)	$3,410	$5,484	$8,635	$13,060

TABLE VI.10—SUMMARY LCC AND PBP RESULTS FOR LARGE OIL-FIRED HOT WATER BOILERS, 3,000 kBTU/h OUTPUT CAPACITY

Large oil-fired hot water	Efficiency level		
	1	2	3
Combustion Efficiency (E_C)	86%	87%	88%
Equipment with Net LCC Increase (%)	2	7	10
Equipment with No Change in LCC (%)	52	24	24
Equipment with Net LCC Savings (%)	46	69	66
Mean LCC Savings ($)	$26,820	$35,114	$42,551
Mean PBP (years)	8.4	11.8	14.3
Increase in Total Installed Cost ($)	$6,644	$12,067	$17,736

TABLE VI.11—SUMMARY LCC AND PBP RESULTS FOR LARGE OIL-FIRED STEAM BOILERS, 3,000 kBTU/h OUTPUT CAPACITY

Large oil-fired steam	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_t)	82%	83%	84%	86%
Equipment with Net LCC Increase (%)	1	2	8	9
Equipment with No Change in LCC (%)	66	41	16	11
Equipment with Net LCC Savings (%)	33	57	77	81
Mean LCC Savings ($)	$13,940	$27,598	$37,978	$59,175
Mean Payback Period (years)	1	2	8	9
Increase in Total Installed Cost ($)	$3,885	$6,970	$11,724	$20,263

2. National Impact Analysis

a. Amount and Significance of Energy Savings

To estimate the energy savings through 2042 due to amended energy conservation standards, DOE compared the energy consumption of commercial boilers under the base case (*i.e.,* the ASHRAE 90.1–2007 efficiency levels) to energy consumption of boilers under higher efficiency standards. DOE examined up to four efficiency levels higher than those of ASHRAE Standard 90.1–2007. The amount of energy savings depends not only on the potential increase in energy efficiency resulting from the adoption of a standard, but also on the rate at which the stock of existing, less-efficient commercial boilers will be replaced over time after implementation of the amended energy conservation standard. Table VI.12 shows the forecasted national energy savings at each of the standard levels. DOE reports both undiscounted and discounted estimates of energy savings. Table VI.13 and Table VI.14 show the magnitude of the energy savings if they are discounted at rates of 7 percent and 3 percent, respectively. Each standard level considered in this rulemaking would result in significant energy savings, and the amount of savings increases with higher energy conservation standards. (See chapter 7 of the final rule TSD.)

TABLE VI.12—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL BOILERS

[Energy savings for units sold from 2012 to 2042, undiscounted]

Equipment class	National energy savings (quads)*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	0.023	0.076	0.147	0.223
Small gas-fired steam, all except natural draft	0.000	0.015	0.031	0.048
Small gas-fired steam natural draft	(0.006)	0.017	0.044	n/a
Small oil-fired hot water	0.016	0.036	0.060	n/a
Small oil-fired steam	0.010	0.028	0.071	n/a
Large gas-fired hot water	0.015	0.039	0.064	0.185
Large gas-fired steam, all except natural draft	0.023	0.066	0.110	0.155
Large gas-fired, steam natural draft	(0.023)	0.004	0.039	0.079
Large oil-fired hot water	0.014	0.025	0.036	n/a
Large oil-fired steam	0.041	0.112	0.209	0.431

*Numbers in parentheses indicate negative potential energy savings due to the delayed implementation of more-stringent efficiency levels compared to the efficiency levels specified in ASHRAE Standard 90.1–2007.

TABLE VI.13—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL BOILERS

[Energy savings for units sold from 2012 to 2042, discounted at seven percent]

Equipment class	National energy savings (quads)*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	0.005	0.015	0.030	0.045
Small gas-fired steam, all except natural draft	(0.000)	0.003	0.006	0.010
Small gas-fired steam natural draft	(0.000)	0.004	0.010	n/a
Small oil-fired hot water	0.003	0.007	0.012	n/a
Small oil-fired steam	0.002	0.006	0.015	n/a
Large gas-fired hot water	0.003	0.008	0.013	0.038
Large gas-fired steam, all except natural draft	0.005	0.014	0.023	0.032
Large gas-fired steam natural draft	(0.003)	0.002	0.009	0.018
Large oil-fired hot water	0.003	0.005	0.007	n/a
Large oil-fired steam	0.008	0.023	0.043	0.088

*Numbers in parentheses indicate negative potential energy savings due to the delayed implementation of more-stringent efficiency levels compared to the efficiency levels specified in ASHRAE Standard 90.1–2007.

TABLE VI.14—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL BOILERS

[Energy savings for units sold from 2012 to 2042, discounted at three percent]

Equipment class	National energy savings (quads)*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	0.011	0.037	0.071	0.108
Small gas-fired steam, all except natural draft	(0.000)	0.007	0.015	0.023
Small gas-fired, steam natural draft	(0.002)	0.009	0.022	n/a
Small oil-fired hot water	0.008	0.017	0.029	n/a
Small oil-fired steam	0.005	0.013	0.035	n/a
Large gas-fired hot water	0.007	0.019	0.031	0.090
Large gas-fired steam, all except natural draft	0.011	0.032	0.054	0.075
Large gas-fired steam, natural draft	(0.010)	0.003	0.020	0.040
Large oil-fired hot water	0.007	0.012	0.017	n/a

TABLE VI.14—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL BOILERS—Continued

[Energy savings for units sold from 2012 to 2042, discounted at three percent]

Equipment class	National energy savings (quads)*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Large oil-fired steam	0.020	0.054	0.101	0.209

* Numbers in parentheses indicate negative potential energy savings due to the delayed implementation of more-stringent efficiency levels compared to the efficiency levels specified in ASHRAE Standard 90.1–2007.

b. Net Present Value

The NPV analysis is a measure of the cumulative benefit or cost of standards to the Nation. In accordance with OMB's guidelines on regulatory analysis (OMB Circular A–4, section E (Sept. 17, 2003)), DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy, and reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE also used the 3-percent rate to capture the potential effects of standards on private customers' consumption (*e.g.,* reduced purchasing of equipment due to higher prices for equipment and purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*e.g.,* yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years. Table VI.15 and Table VI.16 provide an overview of the NPV results. (See chapter 7 of the final rule TSD.)

TABLE VI.15—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR BOILERS

[Discounted at seven percent]

Equipment class	Net present value (billion 2008$)			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	($0.007)	($0.003)	($0.167)	($0.576)
Small gas-fired steam, all except natural draft	(0.036)	(0.039)	(0.082)	(0.120)
Small gas-fired steam natural draft	(0.033)	(0.011)	(0.023)	n/a
Small oil-fired hot water	0.020	0.057	0.048	n/a
Small oil-fired steam	(0.012)	0.004	0.019	n/a
Large gas-fired hot water	0.015	0.031	0.006	(0.098)
Large gas-fired steam, all except natural draft	0.032	0.137	0.240	0.338
Large gas-fired steam natural draft	(0.055)	(0.014)	0.004	(0.024)
Large oil-fired hot water	0.064	0.111	0.120	n/a
Large oil-fired steam	0.132	0.361	0.569	1.151

* Numbers in parentheses indicate negative NPV.

TABLE VI.16—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR BOILERS

[Discounted at three percent]

Equipment class	Net present value (billion 2008$)			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	$0.092	$0.288	$0.139	($0.592)
Small gas-fired steam, all except natural draft	(0.072)	(0.010)	(0.035)	(0.065)
Small gas-fired, steam natural draft	(0.094)	0.049	0.132	n/a
Small oil-fired hot water	0.131	0.297	0.376	n/a
Small oil-fired steam	0.027	0.138	0.347	n/a
Large gas-fired hot water	0.100	0.231	0.264	0.470
Large gas-fired steam, all except natural draft	0.178	0.599	1.020	1.431
Large gas-fired steam natural draft	(0.264)	(0.057)	0.133	0.253
Large oil-fired hot water	0.210	0.356	0.422	n/a
Large oil-fired steam	0.496	1.330	2.240	4.552

* Numbers in parentheses indicate negative NPV.

3. Need of the Nation To Conserve Energy

Improving the energy efficiency of commercial packaged boilers 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. Energy savings for new energy conservation standards for equipment covered under this rule would also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. Table VI.17 provides DOE's estimate of cumulative CO_2, NO_X, and SO_2 emissions reductions that would result from the adoption of new standards for commercial packaged boilers at the ASHRAE 90.1–2007 efficiency levels. Table VI.18 through Table VI.20 provide estimates of additional cumulative CO_2, NO_X, and SO_2 emissions reductions that would result from the adoption of new standards for commercial packaged boilers that exceed the ASHRAE 90.1–2007 efficiency levels. The expected energy savings from the amended standards for commercial packaged boilers may also reduce the cost of maintaining nationwide emissions standards and constraints. In the Environmental Impact Analysis (chapter 8 of the final rule TSD), DOE reports estimated annual changes in CO_2, NO_X, and SO_2 emissions attributable to each efficiency level analyzed.

TABLE VI.17—SUMMARY OF CUMULATIVE NATIONAL EMISSIONS IMPACTS FOR COMMERCIAL BOILERS FROM 2012 TO 2042 FOR ADOPTING ASHRAE STANDARD 90.1–2007

Equipment class	Cumulative national emissions impacts from 2012 to 2042		
	CO_2 (metric kilotons)	NO_X (short tons)	SO_2 (short tons)
Small gas-fired hot water	(674)	(1,177)	0
Small gas-fired steam, all except natural draft	(31)	(54)	0
Small gas-fired steam natural draft	(1,937)	(3,382)	0
Small oil-fired hot water	(677)	(837)	(2,628)
Small oil-fired steam	(327)	(404)	(1,267)
Large gas-fired hot water	(296)	(516)	0
Large gas-fired steam, all except natural draft	(177)	(308)	0
Large gas-fired steam natural draft	(1,525)	(2,662)	0
Large oil-fired hot water	0	0	0
Large oil-fired steam	0	0	0

TABLE VI.18—SUMMARY OF CUMULATIVE CO_2 EMISSIONS IMPACTS FOR COMMERCIAL BOILERS FROM 2012 TO 2042 FOR ADOPTION OF ANALYZED HIGHER STANDARDS OVER THE ASHRAE STANDARD 90.1–2007 LEVELS

Equipment class	Cumulative national CO_2 emissions impacts from 2012 to 2042, metric kilotons			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	(1,227)	(4,039)	(7,858)	(11,880)
Small gas-fired steam, all except natural draft	4	(797)	(1,666)	(2,541)
Small gas-fired steam natural draft	332	(879)	(2,355)	n/a
Small oil-fired hot water	(1,171)	(2,596)	(4,342)	n/a
Small oil-fired steam	(704)	(2,026)	(5,189)	n/a
Large gas-fired hot water	(799)	(2,082)	(3,425)	(9,866)
Large gas-fired steam, all except natural draft	(1,217)	(3,533)	(5,889)	(8,281)
Large gas-fired steam natural draft	1,226	(206)	(2,054)	(4,240)
Large oil-fired hot water	(1,032)	(1,820)	(2,590)	n/a
Large oil-fired steam	(3,007)	(8,110)	(15,167)	(31,354)

TABLE VI.19—SUMMARY OF CUMULATIVE NO_X EMISSIONS IMPACTS FOR COMMERCIAL BOILERS FROM 2012 TO 2042 FOR ADOPTION OF ANALYZED HIGHER STANDARDS OVER THE ASHRAE STANDARD 90.1–2007 LEVELS

Equipment class	Cumulative national NO_X emissions impact from 2012 to 2042, short tons*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	(2,141)	(7,049)	(13,715)	(20,734)
Small gas-fired steam, all except natural draft	6	(1,392)	(2,907)	(4,434)
Small gas-fired steam natural draft	579	(1,534)	(4,110)	n/a
Small oil-fired hot water	(1,447)	(3,208)	(5,365)	n/a
Small oil-fired steam	(870)	(2,504)	(6,413)	n/a
Large gas-fired hot water	(1,395)	(3,634)	(5,978)	(17,219)
Large gas-fired steam, all except natural draft	(2,124)	(6,167)	(10,278)	(14,452)
Large gas-fired steam natural draft	2,140	(359)	(3,585)	(7,401)
Large oil-fired hot water	(1,276)	(2,250)	(3,201)	n/a
Large oil-fired steam	(3,716)	(10,022)	(18,743)	(38,746)

TABLE VI.20—SUMMARY OF CUMULATIVE SO_2 EMISSIONS IMPACTS FOR COMMERCIAL BOILERS FROM 2012 TO 2042 FOR ADOPTION OF ANALYZED HIGHER STANDARDS OVER THE ASHRAE STANDARD 90.1–2007 LEVELS

Equipment class	Cumulative national SO_2 emissions impacts from 2012 to 2042, short tons*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	0	0	0	0
Small gas-fired steam, all except natural draft	0	0	0	0
Small gas-fired steam natural draft	0	0	0	n/a
Small oil-fired hot water	(4,543)	(10,072)	(16,847)	n/a
Small oil-fired steam	(2,731)	(7,863)	(20,136)	n/a
Large gas-fired hot water	0	0	0	0
Large gas-fired steam, all except natural draft	0	0	0	0
Large gas-fired steam natural draft	0	0	0	0
Large oil-fired hot water	(4,005)	(7,064)	(10,051)	n/a
Large oil-fired steam	(11,667)	(31,469)	(58,854)	(121,663)

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 that represented the present value, in that year, of future benefits resulting from that reduction in emissions, which were then discounted from that year to the present using both 3-percent and 7-percent discount rates.

In chapter 9 of the TSD, which accompanied the June 2009 NODA, DOE proposed to use the range $0 to $20 per ton for the year 2007 in 2007$. 74 FR 26596. These estimates were originally derived to represent the lower and upper bounds of the costs and benefits likely to be experienced in the United States and were also used in chapter 9 of the draft TSD for this rulemaking. 74 FR 26596–7 (June 3, 2009). The lower bound was based on an assumption of no benefit and the upper bound was based on an estimate of the mean value of worldwide impacts due to climate change that was reported by the Intergovernmental Panel on Climate Change (IPCC).[19] DOE expected that such domestic values would be 10% or less of comparable global values; however, there were no consensus estimates for the U.S. benefits likely to result from CO_2 emission reductions. Because U.S.-specific estimates were unavailable, DOE used the global mean value as an upper bound U.S. value.

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.[20]

Because of this uncertainty, DOE 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. 74 FR 16920, 17012 (April 13, 2009).

For today's final rule, DOE is relying on an updated range of values consistent with that presented in the Model Year 2011 fuel economy standard final rule issued by the National Highway Traffic Safety Administration (NHTSA): $2, $33 and $80 per metric ton (2007$). In the MY 2011 fuel economy standard final rule, NHTSA relied on a range of estimates representing the uncertainty surrounding global values of the SCC, while also encompassing, at the low end, possible domestic values. These three values encompass much of the variability in the estimates of the global value of the SCC. The lower end of this range, $2, also approximates possible mean value for domestic benefits. The middle of the range, $33, is equal to the mean value in Tol (2008) and the high end of the range, $80, represents one standard deviation above the mean global value. 74 FR 14196, 14346 (March 30, 2009). The global value of $33 is based on Tol's (2008) expanded and updated survey of 211 estimates of the global SCC.[21] Tol's 2008 survey encompasses a larger number of estimates for the global value of reducing carbon emissions than its previously-published counterpart, Tol (2005), and continues to represent the only recent, publicly-available compendium of peer-reviewed estimates of the SCC that has itself been peer-reviewed and published.

The domestic value ($2) was developed by NHTSA by using the mean estimate of the global value of reduced economic damages from climate change resulting from reducing CO_2 emissions as a starting point; estimating the fraction of the reduction in global damages that is likely to be experienced within the U.S.; and applying this fraction to the mean estimate of global benefits from reducing emissions to obtain an estimate of the U.S. domestic benefits from lower GHG emissions. NHTSA constructed the estimate of the U.S. domestic benefits from reducing CO_2

[19] During the preparation of its review of the state of climate science, the IPCC identified various estimates of the present value of reducing CO_2 emissions by 1 ton over the life that these emissions would remain in the atmosphere. The estimates reviewed by the IPCC spanned a range of values. Absent a consensus on any single estimate of the monetary value of CO_2 emissions, DOE used the estimates identified by the study cited in ''Summary for Policymakers,'' prepared by Working Group II of the IPCC's ''Fourth Assessment Report,'' to estimate the potential monetary value of CO_2 reductions likely to result from standards considered in this rulemaking. According to IPCC, the mean social cost of carbon (SCC) reported in studies published in peer-reviewed journals was $43 per ton of carbon. This translates into about $12 per ton of CO_2. The literature review (Tol 2005) from which this mean was derived did not report the year in which these dollars were denominated. However, DOE understands this estimate was for the year 1995 denominated in 1995$. Updating that estimate to 2007$ yields a SCC for the year 1995 of $15 per ton of CO_2.

[20] ''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).

[21] Richard S.J. Tol (2008), The social cost of carbon: Trends, outliers, and catastrophes, Economics—the Open-Access, Open-Assessment E-Journal, 2 (25), 1–24.

emissions using estimates of U.S. domestic and global benefits from reducing greenhouse gas emissions developed by EPA and reported in EPA's Technical Support Document accompanying its advance notice of proposed rulemaking on motor vehicle CO_2 emissions.[22]

A complete discussion of NHTSA's analysis is available in Chapter VIII of the Final Regulatory Analysis of the Corporate Average Fuel Economy for MY 2011 Passenger Cars and Light Trucks (NHTSA, March 2009).

After considering comments and the currently available information and analysis, which was reflected in the approach employed by NHTSA, DOE concluded that it was appropriate to consider the global benefits of reducing CO_2 emissions, as well as the domestic benefits. Consequently, DOE considered in its decision-process for this final rule the potential benefits resulting from reduced CO_2 emissions valued at $2, $33 and $80. The resulting range is based on current peer-reviewed estimates of the value of SCC and, DOE believes, fairly represents the uncertainty surrounding the global benefits resulting from reduced CO_2 emissions and, at the $2 level, also encompasses the likely domestic benefits, DOE also concluded, based on the most recent Tol analysis, that it was appropriate to escalate these values at 3% per year to represent the expected increases, over time, of the benefits associated with reducing CO_2 and other greenhouse gas emissions.

DOE also investigated the potential monetary benefit of reduced NO_X, and SO_2, emissions from the TSLs it considered. As previously stated DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's final rule based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values for NO_X emissions, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001$ (equivalent to a range of $432 to $4,441 per ton in 2007$ ($443 to $4,546 in 2008$). DOE estimated a low end monetary value for SO_2 emissions based on an SO_2 trading price as developed in the National Energy Modeling System (NEMS) electricity market model for the western and eastern U.S. DOE used a simple average of the trading prices from the eastern and western electricity market models for the period from 2012–2030, and extrapolated the prices out through 2042. These range in SO_2 costs from this source varied both by year and region from $86 to $1,012 per ton in 2007$ ($89 to $1,037 in 2008$). For an upper range estimated DOE used an estimate of environmental damage costs of $7,300 per ton of SO_2 from stationary sources, measured in 2001$ or $8,542 per ton in 2007$ ($8,733 in 2008$). These low and high values for the value of emissions for CO_2, NO_X, and SO_2 were in turn multiplied by the annual emissions of each pollutant for the period from 2012–2042, and the monetary values were converted to present value using three and seven percent discount rates.

Table VI.21 through Table VI.22 shows the resulting estimates of the potential range of present value benefits associated with the reduced CO_2, NOx, and SO_2 emissions for each class of commercial boiler for adoption of the ASHRAE 90.1–2007 efficiency levels.

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[22] U.S. EPA, Technical Support Document on Benefits of Reducing GHG Emissions, June 12, 2008.

Table VI.21. Cumulative Present Value for Emissions Reductions from Commercial Boilers from 2012 to 2042 for Adopting ASHRAE Standard 90.1-2007, Seven Percent Discount Rate*

Equipment Class	Cumulative National Emissions Impacts from 2012 to 2042						
	CO_2 (Thousand 2008$)			NO_X (Thousand 2008$)		SO_2 (Thousand 2008$)	
	Low	Med	High	Low	High	Low	High
Small, Gas-fired, Hot Water	$581	$9,582	$23,228	$103	$1,053	$0	$0
Small, Gas-fired, Steam, All Except natural Draft	$26	$437	$1,058	$5	$48	$0	$0
Small, Gas-fired, Steam, Natural Draft	$1,529	$25,230	$61,164	$249	$2,552	$0	$0
Small, Oil-fired, Hot Water	$583	$9,621	$23,324	$73	$749	$271	$4,980
Small, Oil-fired, Steam	$281	$4,640	$11,248	$35	$361	$131	$2,402
Large, Gas-fired, Hot Water	$255	$4,202	$10,186	$45	$462	$0	$0
Large, Gas-fired, Steam, All Except Natural Draft	$152	$2,510	$6,085	$27	$276	$0	$0
Large, Gas-fired, Steam, Natural Draft	$1,144	$18,877	$45,761	$176	$1,806	$0	$0
Large, Oil-fired, Hot Water	$0	$0	$0	$0	$0	$0	$0
Large, Oil-fired, Steam	$0	$0	$0	$0	$0	$0	$0

* The range of costs for carbon were low (2$/metric ton), medium ($33/metric ton) and high ($80/metric ton) all expressed in 2007$. Analysis results express in 2008$.

Table VI.22. Cumulative Present Value for Emissions Reductions from Commercial Boilers from 2012 to 2042 for Adopting ASHRAE Standard 90.1-2007, Three Percent Discount Rate*

Equipment Class	Cumulative National Emissions Impacts from 2012 to 2042						
	CO_2 (Thousand 2008$)			NO_X (Thousand 2008$)		SO_2 (Thousand 2008$)	
	Low	Med	High	Low	High	Low	High
Small, Gas-fired, Hot Water	$1,420	$23,437	$56,817	$235	$2,407	$0	$0
Small, Gas-fired, Steam, All Except natural Draft	$65	$1,068	$2,589	$11	$110	$0	$0
Small, Gas-fired, Steam, Natural Draft	$4,080	$67,328	$163,219	$631	$6,476	$0	$0
Small, Oil-fired, Hot Water	$1,426	$23,533	$57,051	$167	$1,711	$589	$11,381
Small, Oil-fired, Steam	$688	$11,349	$27,513	$80	$825	$284	$5,488
Large, Gas-fired, Hot Water	$623	$10,278	$24,916	$103	$1,056	$0	$0
Large, Gas-fired, Steam, All Except Natural Draft	$372	$6,140	$14,885	$61	$631	$0	$0
Large, Gas-fired, Steam, Natural Draft	$3,212	$53,006	$128,499	$479	$4,910	$0	$0
Large, Oil-fired, Hot Water	$0	$0	$0	$0	$0	$0	$0
Large, Oil-fired, Steam	$0	$0	$0	$0	$0	$0	$0

* * The range of costs for carbon were low (2$/ metric ton), medium ($33/ metric ton) and high ($80/ metric ton) all expressed in 2007$. Analysis results express in 2008$.

Table VI.23 through Table VI.26 show the potential range of present value benefits associated with the reduction of each emission for adoption of efficiency levels higher than the ASHRAE 90.1–2007 levels.

Table VI.23. Cumulative Present Value of CO_2 Emissions Reductions for Commercial Boilers from 2012 to 2042 for Adoption of Higher Standards over ASHRAE 90.1-2007, Seven Percent Discount Rate ($)*

	Cumulative National Present Value of CO_2 Emissions Reductions from 2012 to 2042, Seven Percent Discount Rate ($)*											
Equipment Class	**Efficiency Level 1**			**Efficiency Level 2**			**Efficiency Level 3**			**Efficiency Level 4**		
	$2/ton	$33/ton	$80/ton	$2/ton	$33/ton	$80/ton	$2/ton	$33/ton	$80/ton	$2/ton	$33/ton	$80/ton
Small gas-fired hot water	$1,008	$16,632	$40,320	$3,360	$55,440	$134,400	$6,555	$108,160	$262,206	$9,919	$163,664	$396,762
Small gas-fired steam, all except natural draft	($4)	($63)	($152)	$666	$10,993	$26,650	$1,392	$22,974	$55,695	$2,124	$35,052	$84,975
Small gas-fired, steam natural draft	($177)	($2,924)	($7,088)	$836	$13,790	$33,430	$2,070	$34,155	$82,800	($1,677)	n/a	n/a
Small oil-fired hot water	$961	$15,858	$38,443	$2,153	$35,524	$86,120	$3,613	$59,620	$144,534	($640)	n/a	n/a
Small oil-fired steam	$580	$9,567	$23,193	$1,686	$27,824	$67,452	$4,332	$71,478	$173,280	($308)	n/a	n/a
Large gas-fired hot water	$661	$10,902	$26,429	$1,734	$28,603	$69,341	$2,857	$47,145	$114,291	$8,244	$136,033	$329,777
Large gas-fired steam, all except natural draft	$1,013	$16,720	$40,533	$2,951	$48,688	$118,032	$4,921	$81,197	$196,841	$6,922	$114,210	$276,873
Large gas-fired steam natural draft	($878)	($14,487)	($35,119)	$329	$5,433	$13,170	$1,888	$31,146	$75,507	$3,731	$61,561	$149,240
Large oil-fired hot water	$863	$14,246	$34,535	$1,523	$25,125	$60,910	$2,167	$35,752	$86,672	$0	n/a	n/a
Large oil-fired steam	$2,515	$41,499	$100,604	$6,784	$111,932	$271,351	$12,687	$209,337	$507,484	$26,227	$432,742	$1,049,071

* Costs for carbon are expressed in 2007$/metric ton. Results expressed in 2008$. Numbers in parentheses indicate negative NPV.

Table VI.24. Cumulative Present Value of CO_2 Emissions Reductions for Commercial Boilers from 2012 to 2042 for Adoption of Higher Standards over ASHRAE 90.1-2007, Three Percent Discount Rate ($)*

	Cumulative National Present Value of CO_2 Emissions Reductions from 2012 to 2042, Three Percent Discount Rate ($)											
Equipment Class	**Efficiency Level 1**			**Efficiency Level 2**			**Efficiency Level 3**			**Efficiency Level 4**		
	$2/ton	$33/ton	$80/ton	$2/ton	$33/ton	$80/ton	$2/ton	$33/ton	$80/ton	$2/ton	$33/ton	$80/ton
Small gas-fired hot water	$2,584	$42,631	$103,347	$8,506	$140,341	$340,221	$16,550	$273,081	$662,014	$25,020	$412,830	$1,000,800
Small gas-fired steam, all except natural draft	($7)	($123)	($299)	$1,680	$27,713	$67,183	$3,508	$57,879	$140,312	$5,351	$88,290	$214,035
Small gas-fired, steam natural draft	($699)	($11,534)	($27,961)	$1,851	$30,549	$74,057	$4,959	$81,823	$198,360	($4,476)	n/a	n/a
Small oil-fired hot water	$2,466	$40,684	$98,629	$5,467	$90,201	$218,669	$9,144	$150,871	$365,747	($1,565)	n/a	n/a
Small oil-fired steam	$1,482	$24,453	$59,281	$4,268	$70,421	$170,718	$10,929	$180,333	$437,171	($755)	n/a	n/a
Large gas-fired hot water	$1,684	$27,780	$67,344	$4,385	$72,349	$175,390	$7,214	$119,033	$288,564	$20,778	$342,836	$831,117
Large gas-fired steam, all except natural draft	$2,563	$42,295	$102,534	$7,442	$122,786	$297,662	$12,402	$204,636	$496,087	$17,440	$287,757	$697,592
Large gas-fired steam natural draft	($2,582)	($42,608)	($103,292)	$433	$7,150	$17,333	$4,326	$71,381	$173,046	$8,931	$147,356	$357,227
Large oil-fired hot water	$2,174	$35,868	$86,952	$3,834	$63,261	$153,359	$5,456	$90,017	$218,222	$0	n/a	n/a
Large oil-fired steam	$6,333	$104,487	$253,301	$17,080	$281,824	$683,210	$31,944	$527,071	$1,277,747	$66,034	$1,089,561	$2,641,360

* Costs for carbon are expressed in 2007$/metric ton. Results expressed in 2008$. Numbers in parentheses indicate negative NPV.

Table VI.25. Cumulative Present Value of NO_X Emissions Reductions for Commercial Boilers from 2012 to 2042 for Adoption of Higher Standards over ASHRAE 90.1 - 2007

	Cumulative National Present Value of NO_X Emissions Reductions from 2012 to 2042, Seven Percent Discount Rate ($)*			
Equipment Class	**Efficiency Level 1**	**Efficiency Level 2**	**Efficiency Level 3**	**Efficiency Level 4**
Small gas-fired hot water	165 - 1,700	165 - 1,700	1,091 - 11,241	1,652 - 17,027
Small gas-fired steam, all except natural draft	(1) - (8)	(1) - (8)	232 - 2,393	354 - 3,652
Small gas-fired, steam natural draft	(15) - (156)	(15) - (156)	360 - 3,709	n/a
Small oil-fired hot water	111 - 1,147	111 - 1,147	425 - 4,376	n/a
Small oil-fired steam	67 - 695	67 - 695	511 - 5,264	n/a
Large gas-fired hot water	109 - 1,122	109 - 1,122	475 - 4,900	1,374 - 14,165
Large gas-fired steam, all except natural draft	168 - 1,734	168 - 1,734	820 - 8,455	1,154 - 11,896
Large gas-fired steam natural draft	(125) - (1,284)	(125) - (1,284)	340 - 3,501	649 - 6,690
Large oil-fired hot water	102 - 1,051	102 - 1,051	256 - 2,639	n/a
Large oil-fired steam	297 - 3,063	297 - 3,063	1,499 - 15,450	3,099 - 31,939
	Cumulative National Present Value of NO_X Emissions Reductions from 2012 to 2042, Three Percent Discount Rate ($)			
Equipment Class	**Efficiency Level 1**	**Efficiency Level 2**	**Efficiency Level 3**	**Efficiency Level 4**
Small gas-fired hot water	401 - 4,133	1,332 - 13,732	2,598 - 26,771	3,930 - 40,500
Small gas-fired steam, all except natural draft	(1) - (15)	264 - 2,720	551 - 5,683	841 - 8,671
Small gas-fired, steam natural draft	(80) - (821)	321 - 3,313	810 - 8,350	n/a
Small oil-fired hot water	271 - 2,791	605 - 6,235	1,014 - 10,455	n/a
Small oil-fired steam	163 - 1,682	473 - 4,879	1,215 - 12,524	n/a
Large gas-fired hot water	262 - 2,705	687 - 7,083	1,132 - 11,669	3,265 - 33,655
Large gas-fired steam, all except natural draft	402 - 4,141	1,169 - 12,048	1,949 - 20,088	2,741 - 28,254
Large gas-fired steam natural draft	(362) - (3,728)	115 - 1,190	731 - 7,539	1,460 - 15,048
Large oil-fired hot water	242 - 2,495	427 - 4,400	608 - 6,261	n/a
Large oil-fired steam	705 - 7,268	1,902 - 19,602	3,557 - 36,661	7,353 - 75,785

* Numbers in parentheses indicate negative NPV.

Table VI.26. Cumulative Present Value of SO_2 Emissions Reductions for Commercial Boilers from 2012 to 2042 for Adoption of Higher Standards over ASHRAE 90.1 - 2007

	Cumulative National Present Value of SO_2 Emissions Reductions from 2012 to 2042, Seven Percent Discount Rate ($)*			
Equipment Class	Efficiency Level 1	Efficiency Level 2	Efficiency Level 3	Efficiency Level 4
Small gas-fired hot water	0 - 0	0 - 0	0 – 0	0 - 0
Small gas-fired steam, all except natural draft	0 – 0	0 - 0	0 – 0	0 - 0
Small gas-fired, steam natural draft	0 – 0	0 - 0	0 – 0	n/a
Small oil-fired hot water	403 - 7,631	919 - 17,293	1,552 - 29,131	n/a
Small oil-fired steam	245 - 4,623	724 - 13,593	1,871 - 35,038	n/a
Large gas-fired hot water	0 – 0	0 - 0	0 – 0	0 - 0
Large gas-fired steam, all except natural draft	0 – 0	0 - 0	0 – 0	0 - 0
Large gas-fired steam natural draft	0 – 0	0 - 0	0 – 0	0 - 0
Large oil-fired hot water	374 - 6,998	660 - 12,343	939 - 17,564	n/a
Large oil-fired steam	1,090 - 20,387	2,940 - 54,989	5,499 - 102,842	11,367 - 212,594
	Cumulative National Present Value of SO_2 Emissions Reductions from 2012 to 2042, Three Percent Discount Rate ($)			
Equipment Class	Efficiency Level 1	Efficiency Level 2	Efficiency Level 3	Efficiency Level 4
Small gas-fired hot water	0 – 0	0 - 0	0 – 0	0 - 0
Small gas-fired steam, all except natural draft	0 – 0	0 - 0	0 - 0	0 - 0
Small gas-fired, steam natural draft	0 – 0	0 - 0	0 - 0	n/a
Small oil-fired hot water	936 - 18,576	2,103 - 41,502	3,533 - 69,591	n/a
Small oil-fired steam	565 - 11,196	1,649 - 32,478	4,239 - 83,366	n/a
Large gas-fired hot water	0 – 0	0 - 0	0 - 0	0 - 0
Large gas-fired steam, all except natural draft	0 – 0	0 - 0	0 - 0	0 - 0
Large gas-fired steam natural draft	0 – 0	0 - 0	0 - 0	0 - 0
Large oil-fired hot water	845 - 16,606	1,491 - 29,289	2,122 - 41,676	n/a
Large oil-fired steam	2,463 - 48,376	6,642 - 130,480	12,423 - 244,025	25,680 - 504,448

* Numbers in parentheses indicate negative NPV.

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C. Amended Energy Conservation Standards for Commercial Packaged Boilers

EPCA specifies that, for any commercial and industrial equipment addressed in section 342(a)(6)(A)(i) of EPCA, DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE/IESNA Standard 90.1, as amended, only if ''clear and convincing evidence'' shows that a more-stringent standard ''would result in significant additional conservation of energy and is technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A)(ii)(II))

In evaluating more-stringent efficiency levels for commercial packaged boilers than those specified by ASHRAE Standard 90.1–2007, DOE reviewed the results in terms of their technological feasibility, economic justification, and significance of energy savings.

DOE first examined the potential energy savings that would result from the efficiency levels specified in ASHRAE Standard 90.1–2007 and compared that to the potential energy savings that would result from proposing efficiency levels more stringent than those in ASHRAE Standard 90.1–2007 as Federal energy conservation standards. All of the efficiency levels examined by DOE resulted in cumulative energy savings, including the efficiency levels in ASHRAE Standard 90.1–2007. DOE estimates that a total of 0.11 quads of energy will be saved if DOE adopts the efficiency levels for each commercial boiler equipment class specified in ASHRAE Standard 90.1–2007. If DOE were to propose efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007 as Federal minimum standards, the potential additional energy savings ranges from 0.11 quads to 1.12 quads. Associated with proposing more-stringent efficiency levels is a two-year delay in implementation compared to the adoption of energy conservation standards at the level specified in ASHRAE Standard 90.1–2007 (see section V.H.1). This two-year delay in implementation of amended energy conservation standards would result in a small amount of energy savings being lost in the first two years (2012 and 2013) compared to the savings from adopting the levels in ASHRAE Standard 90.1–2007; however, this energy savings may be compensated for by increased savings from higher standards in later years.

In addition to energy savings, DOE also examined the economic justification of proposing efficiency levels more stringent than those specified in ASHRAE Standard 90.1–2007. As shown in section VI.B.1, higher efficiency levels result in a positive mean LCC savings for some commercial packaged boiler equipment classes. For example, in the largest commercial packaged boiler equipment class (*i.e.,* small, gas-fired hot water boilers), the mean LCC impact ranges from $1,700 LCC savings to a mean LCC cost of $4,760 for efficiency level 1 through efficiency level 4 respectively. The total installed cost increases range from $3,364 to $14,323 for efficiency level 1 through efficiency level 4 when compared to the baseline. Overall, there would be a wide range of commercial customer LCC impacts based on climate, hydronic system operating temperature, and installation costs, which might place a significant burden on some commercial customers.

In general, there is a large range in the total installed cost of different types of commercial boiler equipment, leading to a high variance and uncertainty in the economic analyses. Many factors affect the cost of a commercial boiler, including the type of commercial packaged boilers, the material of the heat exchanger being used, and the overall design. In addition, the installation costs of boilers vary greatly depending on the efficiency, the location of the boiler, and the venting system. In more efficient boilers, the flue must be made out of corrosion-resistant materials to prevent the possibility of corrosion caused due to condensing flue gases. Because the mean LCC savings can be considered small in comparison to the total installed cost of the equipment, a relatively minor change in the differential installed cost estimate could negate the mean LCC savings realized by proposing more-stringent efficiency levels as Federal minimum standards for commercial packaged boilers.

After examining the potential energy savings and the economic justification of proposing efficiency levels more stringent than those specified in ASHRAE Standard 90.1–2007, DOE believes there are several other factors it should consider before proposing amended energy conservation standards for commercial packaged boilers.

First, DOE reexamined the certainty in its analysis of commercial packaged boilers. Due to current test procedure requirements, which are based on combustion, rather than thermal efficiency, not all manufacturers test for the thermal efficiency of their commercial boiler models, nor do they all report it to the I=B=R Directory or in manufacturers' catalogs. Some manufacturers simply do not report thermal efficiency, and of those manufacturers that do report thermal efficiency, some may estimate the thermal efficiency ratings of their equipment, rather than actually test for the thermal efficiency of their equipment. DOE has no way to determine which thermal efficiency ratings are the result of estimation and which are the result of actual testing. Further, in the case of manufacturers that do test for thermal efficiency, variances in testing facilities and equipment can lead to inconsistent results in the thermal efficiency testing among the manufacturers. The combination of these factors leads to concerns about the viability of using the data from the I=B=R Directory and manufacturers' catalogs as the source for thermal efficiency ratings for the basis of this analysis. Such concerns are heightened the further one moves away from the consensus efficiency levels in ASHRAE Standard 90.1–2007 in the context of this standard-setting rulemaking.

Because ASHRAE Standard 90.1–2007 has switched to a thermal efficiency metric for certain commercial packaged boiler equipment classes, a one-time conversion in the DOE efficiency metric will be required at some point. The transition to a thermal efficiency metric will require manufacturers to test for and report thermal efficiency for 8 out of 10 commercial boiler equipment classes. This would mitigate the problem of uncertainty in the thermal efficiency ratings for those equipment classes, allowing DOE to be able to make more definitive comparisons with future versions of ASHRAE Standard 90.1. DOE believes that an earlier transition to a rated thermal efficiency across the industry will provide additional, near-term benefits covering the entire industry that are not captured in the DOE analysis presented. These benefits may include more rapid exposure of purchasers to the rated thermal efficiency of competing products, which lays the groundwork for assessing the benefits of one boiler against another in the marketplace and will create greater competition among manufacturers to provide customers with additional purchasing choices. DOE has no information with which to calculate this benefit.

Second, DOE notes the efficiency levels in ASHRAE Standard 90.1–2007 are part of a consensus agreement between the trade association representing the manufacturers and

several energy-efficiency advocacy groups. DOE strongly encourages stakeholders to work together to propose agreements to DOE. When DOE receives a consensus agreement, DOE takes careful consideration to review the agreement resulting from groups that commonly have conflicting goals. DOE also points out that the Joint Letter submitted by AHRI, ACEEE, ASAP, ASE, and NRDC urged DOE to adopt as Federal minimum energy conservation standards the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers. (The Joint Letter, No. 5 at p. 1) DOE believes this negotiated agreement was made in good faith, and DOE is hesitant to second guess the outcome based on a limited analysis with many uncertainties. DOE presented these efficiency levels for public comment and, as discussed earlier, commenters supported the adoption of these levels.

Third, DOE has not assessed any likely change in the efficiencies of models currently on the boiler market in the absence of setting more-stringent standards. DOE recognizes that manufacturers would continue to make future improvements in the boiler efficiencies even in the absence of mandated energy conservation standards. Such ongoing technological developments could have a disproportionately larger impact on the analytical results for the more-stringent efficiency levels analyzed in terms of reduced energy benefits as compared to the ASHRAE Standard 90.1–2007 efficiency level scenario. When manufacturers introduce a new product line, they typically introduce higher-efficiency models, while maintaining their baseline product offering (*i.e.,* equipment at the ASHRAE Standard 90.1–2007 efficiency levels). Any introduction of higher-efficiency equipment and subsequent purchase by commercial customers, who usually buy higher-efficiency equipment, could reduce the energy savings benefits of more-stringent efficiency levels.

Fourth, DOE believes there could be a possible difference in life expectancy between the commercial packaged boilers at the ASHRAE Standard 90.1–2007 efficiency levels and those at more-stringent efficiency levels, including condensing boilers. DOE did not have any information to quantify these differences and did not receive any additional comments from interested parties regarding these potential differences in expected lifetime in response to the March 2009 NOPR.

Finally, DOE also recognizes that commercial packaged boilers are one component in a hydronic system. Unlike most of the other residential appliances and commercial equipment for which DOE mandates energy conservation standards, the design and operation of that hydronic system (*i.e.,* the hot-water distribution system) can result in significant variances in the annual field efficiencies of the commercial packaged boilers compared to the rated efficiency levels of these units. DOE recognizes that as a result, a critical piece of information needed to ensure that the benefits of high nominal efficiency commercial packaged boilers are actually achieved in the field is not captured in the DOE analysis.

After weighing the benefits and burdens of adopting the ASHRAE Standard 90.1–2007 efficiency levels as Federal standards for commercial packaged boilers as compared to those for proposing more-stringent efficiency levels, DOE is adopting the efficiency levels in ASHRAE 90.1–2007 as amended energy conservation standards for all ten commercial packaged boilers equipment classes. DOE must have ''clear and convincing'' evidence to adopt efficiency levels more stringent than those specified in ASHRAE 90.1–2007, and for the reasons explained in this notice, the totality of information does not meet the ''clear and convincing'' standard that would justify more stringent efficiency levels. Given the relatively small mean LCC savings (in comparison to the total installed cost), even a slight alteration in DOE's installation estimates could result in the potential for negative mean LCC savings. In addition, the uncertainty of the thermal efficiency values reported may have resulted in an imprecise estimate of the efficiency of some equipment, leading to even greater uncertainty in the economic benefits of more-stringent standards.

DOE recognizes that the thermal efficiency metric is superior to the combustion efficiency metric because thermal efficiency is a more complete measure of boiler efficiency than the combustion efficiency metric (thermal efficiency accounts for jacket losses and combustion efficiency does not). DOE believes that once commercial packaged boilers are transitioned from the combustion efficiency metric to the thermal efficiency metric, the thermal efficiency ratings of certified equipment will be more accurate and consistent. The efficiency levels in ASHRAE Standard 90.1–2007 are an acceptable foundation that will allow the commercial boiler industry to begin the transition from using combustion efficiency to a thermal efficiency metric. DOE also takes into account the consensus nature of the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers.

Therefore, based on the discussion above, DOE has concluded that the efficiency levels beyond those in ASHRAE Standard 90.1–2007 for commercial packaged boilers are not economically justified and is adopting as Federal minimum standards the efficiency levels in ASHRAE Standard 90.1–2007 for all ten equipment classes of commercial packaged boilers. Table VI.27 shows the amended energy conservation standards for commercial packaged boilers.

TABLE VI.27—AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS *

Equipment type	Subcategory	Size category (input)	Efficiency level **
Hot Water Commercial Packaged Boilers	Gas-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	80% E_T
Hot Water Commercial Packaged Boilers	Gas-fired	>2,500,000 Btu/h	82% E_C
Hot Water Commercial Packaged Boilers	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	82% E_T
Hot Water Commercial Packaged Boilers	Oil-fired	>2,500,000 Btu/h	84% E_C
Steam Commercial Packaged Boilers	Gas-fired—all, except natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	79% E_T
Steam Commercial Packaged Boilers	Gas-fired—all, except natural draft	>2,500,000 Btu/h	79% E_T
Steam Commercial Packaged Boilers	Gas-fired—natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	77% E_T 79% E_T
Steam Commercial Packaged Boilers	Gas-fired—natural draft	>2,500,000 Btu/h	77% E_T 79% E_T
Steam Commercial Packaged Boilers	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	81% E_T

TABLE VI.27—AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS *—Continued

Equipment type	Subcategory	Size category (input)	Efficiency level **
Steam Commercial Packaged Boilers	Oil-fired	>2,500,000 Btu/h	81% E_T

* E_T is the thermal efficiency and E_C is the combustion efficiency.
** The effective date for the amended energy conservation standards is March 2, 2012. Where the table indicates a two-tier efficiency level, the second efficiency level is effective March 2, 2022.

D. Amended Energy Conservation Standards for Water-Cooled and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps With a Cooling Capacity at or Above 240,000 Btu/h and Less Than 760,000 Btu/h

DOE is adopting new energy conservation standards for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h by adopting the efficiency levels specified by ASHRAE Standard 90.1–2007. DOE did not analyze the economic and energy savings potential of amended national energy conservation standards for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h for the efficiency levels in ASHRAE Standard 90.1–2007 or efficiency levels beyond those specified in ASHRAE Standard 90.1, because there is no equipment currently being manufactured in this equipment class.[23] 74 FR 12013. Table VI.28 shows the amended energy conservation standards for this equipment. The standards for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h established in this final rule will apply starting on January 10, 2011.

Table VI.28. Amended Energy Conservation Standards for Water-Cooled and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps with a Cooling Capacity at or above 240,000 Btu/h and less than 760,000 Btu/h

ASHRAE Equipment Class	Federal Energy Conservation Standards	Amended Federal Energy Conservation Standards	
		Energy-Efficiency Levels	Effective Date
Commercial Package Air-Conditioning and Heating Equipment			
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and with No Heating or with Electric Resistance Heating*	None	11.0 EER**	1/10/2011
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and with Heating That is Other Than Electric Resistance Heating	None	10.8 EER	1/10/2011

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's final rule has been determined not to be a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.

B. Review Under the National Environmental Policy Act

DOE prepared an environmental assessment (EA) of the impacts of the proposed standards in the March 2009 NOPR pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). 74 FR 26596. This assessment included a concise examination of the impacts of emission reductions likely to result from the rule. DOE found the environmental effects associated with today's various standard levels for commercial packaged boilers and water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h to be not significant, and therefore it is issuing a Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part

[23] ASHRAE Standard 90.1–2007 specified efficiency levels for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h even though equipment does not exist in the current marketplace in this category. ASHRAE's actions for this equipment triggered DOE action regardless of whether equipment is currently offered for sale.

1021). The FONSI is available in the docket for this rulemaking.

C. Review Under the Regulatory Flexibility Act

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

DOE reviewed the March 2009 NOPR under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003 (68 FR 7990). 74 FR 12044. As part of this rulemaking, DOE examined the existing compliance costs manufacturers already bear and compared them to the revised compliance costs, based on the proposed revisions to the test procedure. Since DOE is adopting the efficiency levels in ASHRAE Standard 90.1–2007, which are part of the prevailing industry standard and the result of a consensus agreement, DOE believes that commercial packaged boiler manufacturers are already producing equipment at these efficiency levels. For water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h, DOE believes the efficiency levels being adopted are also part of the prevailing industry standard and that manufacturers would experience no impacts, because no such equipment is currently manufactured. Furthermore, DOE believes the industry standard was developed through a process, which would attempt to mitigate the impacts on manufacturers, including any small commercial packaged boiler manufacturers, while increasing the efficiency of this equipment. In addition, DOE does not find that the costs imposed by the revisions proposed to the test procedure for commercial packaged boilers in this document would result in any significant increase in testing or compliance costs.

DOE received no comments in response to the NOPR. For the reasons stated above, DOE certifies that the final rule would not have a significant economic impact on a substantial number of small entities. Therefore, DOE did not prepare an initial regulatory flexibility analysis for the proposed rule.

D. Review Under the Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), a person is not required to respond to a collection of information by a Federal agency, including a requirement to maintain records, unless the collection displays a valid OMB control number. (44 U.S.C. 3506(c)(1)(B)(iii)(V)) DOE stated in the March 2009 NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 74 FR 12044. DOE received no comments on this in response to the NOPR and, as with the proposed rule, today's final rule imposes no information and recordkeeping requirements. DOE takes no further action in this rulemaking with respect to the Paperwork Reduction Act.

E. Review Under the Unfunded Mandates Reform Act of 1995

As described in the March 2009 NOPR, DOE reviewed this regulatory action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), which requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement assessing the resulting costs, benefits, and other effects of the rule on the national economy (2 U.S.C. 1532(a) and (b)). Section 204 of UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' (2 U.S.C. 1534) Section 203 of UMRA requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments that may be affected before establishing any requirements that might significantly or uniquely affect small governments. (2 U.S.C. 1533) On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at: *http://www.gc.doe.gov*).

DOE concluded that the March 2009 NOPR contained neither an intergovernmental mandate nor a mandate that may result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of $100 million or more in any year. 74 FR 12045. Accordingly, no assessment or analysis was required under UMRA. *Id.* DOE received no comments concerning the UMRA in response to the NOPR, and its conclusions on this issue are the same for the final rule as for the March 2009 NOPR. DOE takes no further action in today's final rule with respect to the UMRA.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. As stated in the March 2009 NOPR, DOE decided this rule would not have any impact on the autonomy or integrity of the family as an institution. 74 FR 12045. Accordingly, DOE concluded that it was unnecessary to prepare a Family Policymaking Assessment. *Id.* DOE received no comments concerning Section 654 in response to the NOPR, and thus takes no further action in today's final rule with respect to this provision.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the

intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. As explained in the March 2009 NOPR, DOE examined this proposed rule and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. 74 FR 12045. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, as set forth in EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D)) No further action is required by Executive Order 13132.

H. Review Under Executive Order 12988

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

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE determined the proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy, and, therefore, is not a significant energy action. 74 FR 12045. Furthermore, this regulatory action has not been designated as a significant energy action by the Administrator or of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects. *Id.* DOE received no comments on this issue in response to the March 2009 NOPR. As with the proposed rule, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211, and has not prepared a Statement of Energy Effects on the rule.

K. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

Certain amendments and revisions in this final rule incorporate updates to commercial standards already codified in DOE's test procedure regulations in the CFR. As stated in the March 2009 NOPR, DOE has evaluated these updated standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, (*i.e.,* determine that they were developed in a manner that fully provides for public participation, comment, and review). 74 FR 12046. DOE has consulted with the Attorney General and the Chairman of the FTC concerning the impact of these standards on competition, and neither recommended against their incorporation.

M. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB in consultation with the Office of Science and Technology Policy (OSTP), issued its ''Final Information Quality Bulletin for Peer Review'' (Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency

regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemakings analyses are ''influential scientific information.'' The Bulletin defines ''influential scientific information'' as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667 (Jan. 14, 2005).

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and analyses, and then prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation process using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2). DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to Congress.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on July 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, DOE is amending Chapter II of Title 10, Code of Federal Regulations, Part 431 to read as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. In § 431.82, revise the definition ''combustion efficiency'' and add definitions for ''Btu/h or Btu/hr'' and ''thermal efficiency,'' in alphabetical order to read as follows:

§ 431.82 Definitions concerning commercial packaged boilers.

* * * * *

Btu/h or *Btu/hr* means British thermal units per hour.

Combustion efficiency for a commercial packaged boiler is determined using test procedures prescribed under § 431.86 and is equal to 100 percent minus percent flue loss (percent flue loss is based on input fuel energy).

* * * * *

Thermal efficiency for a commercial packaged boiler is determined using test procedures prescribed under § 431.86 and is the ratio of the heat absorbed by the water or the water and steam to the higher heating value in the fuel burned.

■ 3. Revise § 431.85 to read as follows:

§ 431.85 Materials incorporated by reference.

(a) *General.* We incorporate by reference the following standards into Subpart E of Part 431. The material listed has been approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR 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 go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is 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 go to: *http://www1.eere.energy.gov/buildings/appliance_standards/.* Standards can be obtained from the sources listed below.

(b) *HI.* The Gas Appliance Manufacturers Association (GAMA) merged in 2008 with the Air-Conditioning and Refrigeration Institute to become the Air-Conditioning, Heating, and Refrigeration Institute (AHRI). The Hydronics Institute BTS–2000 Testing Standard can be obtained from AHRI. For information on how to obtain this material, contact the Hydronics Institute Section of AHRI, P.O. Box 218, Berkeley Heights, NJ 07922–0218, (866) 408–3831, or go to: *http://www.ahrinet.org/Content/OrderaStandard_573.aspx.*

(1) The Hydronics Institute Division of GAMA BTS–2000 Testing Standard, (''HI BTS–2000, Rev 06.07''), *Method to Determine Efficiency of Commercial Space Heating Boilers,* Second Edition (Rev 06.07), 2007, IBR approved for § 431.86.

(2) [Reserved].

■ 4. Revise § 431.86, to read as follows:

§ 431.86 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.

(a) *Scope.* This section provides test procedures that must be followed for measuring, pursuant to EPCA, the steady state combustion efficiency and thermal efficiency of a gas-fired or oil-fired commercial packaged boiler. These test procedures apply to packaged low pressure boilers that have rated input capacities of 300,000 Btu/h or more and are ''commercial packaged boilers,'' but do not apply under EPCA to ''packaged high pressure boilers.''

(b) *Definitions.* For purposes of this section, the Department incorporates by reference the definitions specified in Section 3.0 of the HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85), with the exception of the definition for the terms ''packaged boiler,'' ''condensing boilers,'' and ''packaged low pressure steam'' and ''hot water boiler.''

(c) *Test Method for Commercial Packaged Boilers—General.* Follow the provisions in this paragraph (c) for all testing of packaged low pressure boilers that are commercial packaged boilers.

(1) *Test Setup*—(i) *Classifications:* If employing boiler classification, you must classify boilers as given in Section 4.0 of the HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85).

(ii) *Requirements:* (A) Before March 2, 2012, conduct the combustion efficiency test as given in Section 5.2 (Combustion Efficiency Test) of the HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85) for all commercial packaged boiler equipment classes.

(B) On or after March 2, 2012, conduct the thermal efficiency test as given in Section 5.1 (Thermal Efficiency Test) of the HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85) for the following commercial packaged boiler equipment classes: Small, gas, hot water; small, gas, steam, all except natural draft; small, gas, steam, natural draft; small, oil, hot water; small, oil, steam; large, gas, steam, all except natural draft; large, gas, steam, natural draft; and large, oil, steam. On or after March 2, 2012, conduct the combustion efficiency test as given in Section 5.2 (Combustion Efficiency Test) of the HI BTS–2000, Rev 06.07 for the following commercial packaged boiler equipment classes: Large, gas-fired, hot water and large, oil-fired, hot water.

(iii) *Instruments and Apparatus:* (A) Follow the requirements for instruments and apparatus in sections 6 (Instruments) and 7 (Apparatus), of the HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85), with the exception of section 7.2.5 (flue connection for outdoor boilers) which is replaced with paragraph (c)(1)(iii)(B) of this section:

(B) *Flue Connection for Outdoor Boilers:* Consistent with the procedure specified in section 7.2.1 of HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85), the integral venting used in oil-fired and power gas outdoor boilers may be modified only to the extent necessary to permit the boiler's connection to the test flue apparatus for testing.

(iv) *Test Conditions:* Use test conditions from Section 8.0 (excluding 8.6.2) of HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85) for combustion efficiency testing. Use all of the test conditions from Section 8.0 of HI BTS–2000, Rev 06.07 for thermal efficiency testing.

(2) *Test Measurements*—(i) *Non-Condensing Boilers:* (A) *Combustion Efficiency.* Measure for combustion efficiency according to sections 9.1 (excluding sections 9.1.1.2.3 and 9.1.2.2.3), 9.2 and 10.2 of the HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85).

(B) *Thermal Efficiency.* Measure for thermal efficiency according to sections 9.1 and 10.1 of the HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85).

(ii) *Procedure for the Measurement of Condensate for a Condensing Boiler.* For the combustion efficiency test, collect flue condensate as specified in Section 9.2.2 of HI BTS–2000, Rev 06.07 (incorporated by reference, see § 431.85). Measure the condensate from the flue gas under steady state operation for the 30 minute collection period during the 30 minute steady state combustion efficiency test. Flue condensate mass shall be measured immediately at the end of the 30 minute collection period to prevent evaporation loss from the sample. The humidity of the room shall at no time exceed 80 percent. Determine the mass of flue condensate for the steady state period by subtracting the tare container weight from the total container and flue condensate weight measured at the end of the test period. For the thermal efficiency test, collect and measure the condensate from the flue gas as specified in Section 9.1.1 and 9.1.2 of HI BTS–2000, Rev 06.07.

(iii) *A Boiler That is Capable of Supplying Either Steam or Hot Water*—(A) *Testing.* For purposes of EPCA, before March 2, 2012, measure the combustion efficiency of any size commercial packaged boiler capable of supplying either steam or hot water either by testing the boiler in the steam mode or by testing it in both the steam and hot water modes. On or after March 2, 2012, measure the combustion efficiency and thermal efficiency of a large (fuel input greater than 2,500 kBtu/h) commercial packaged boiler capable of supplying either steam or hot water either by testing the boiler for both efficiencies in steam mode, or by testing the boiler in both steam and hot water modes measuring the thermal efficiency of the boiler in steam mode and the combustion efficiency of the boiler in hot water mode. Measure only the thermal efficiency of a small (fuel input of greater than or equal to 300 kBtu/h and less than or equal to 2,500 kBtu/h) commercial packaged boiler capable of supplying either steam or hot water either by testing the boiler for thermal efficiency only in steam mode or by testing the boiler for thermal efficiency in both steam and hot water modes.

(B) *Rating.* If testing a large boiler only in the steam mode, use the efficiencies determined from such testing to rate the thermal efficiency for the steam mode and the combustion efficiency for the hot water mode. If testing a large boiler in both modes, rate the boiler's efficiency for each mode based on the testing in that mode. If testing a small boiler only in the steam mode, use the efficiencies determined from such testing to rate the thermal efficiency for the steam mode and the hot water mode. If testing a small boiler in both modes, rate the boiler's efficiency for each mode based on the testing in that mode.

(3) *Calculation of Efficiency*—(i) *Combustion Efficiency.* Use the calculation procedure for the combustion efficiency test specified in Section 11.2 (including the specified subsections of 11.1) of the HI BTS–2000, Rev 06.07 (incorporated by reference, *see* § 431.85).

(ii) *Thermal Efficiency.* Use the calculation procedure for the thermal efficiency test specified in Section 11.1 of the HI BTS–2000, Rev 06.07 (incorporated by reference, *see* § 431.85).

■ 5. Revise § 431.87 to read as follows:

§ 431.87 Energy conservation standards and their effective dates.

(a) Each commercial packaged boiler manufactured on or after January 1, 1994, and before March 2, 2012, must meet the following energy efficiency standard levels:

(1) For a gas-fired packaged boiler with a capacity (rated maximum input) of 300,000 Btu/h or more, the combustion efficiency at the maximum rated capacity must be not less than 80 percent.

(2) For an oil-fired packaged boiler with a capacity (rated maximum input) of 300,000 Btu/h or more, the combustion efficiency at the maximum rated capacity must be not less than 83 percent.

(b) Each commercial packaged boiler listed in Table 1 to § 431.87 and manufactured on or after the effective date listed in Table 1 of this section, must meet the applicable energy conservation standard in Table 1.

TABLE 1 TO § 431.87—COMMERCIAL PACKAGED BOILER ENERGY CONSERVATION STANDARDS

Equipment type	Subcategory	Size category (input)	Efficiency level—Effective date: March 2, 2012 *
Hot Water Commercial Packaged Boilers.	Gas-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	80.0% E_T
Hot Water Commercial Packaged Boilers.	Gas-fired	>2,500,000 Btu/h	82.0% E_C
Hot Water Commercial Packaged Boilers.	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	82.0% E_T
Hot Water Commercial Packaged Boilers.	Oil-fired	>2,500,000 Btu/h	84.0% E_C
Steam Commercial Packaged Boilers	Gas-fired—all, except natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	79.0% E_T
Steam Commercial Packaged Boilers	Gas-fired—all, except natural draft	>2,500,000 Btu/h	79.0% E_T
Steam Commercial Packaged Boilers	Gas-fired—natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	77.0% E_T
Steam Commercial Packaged Boilers	Gas-fired—natural draft	>2,500,000 Btu/h	77.0% E_T
Steam Commercial Packaged Boilers	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	81.0% E_T
Steam Commercial Packaged Boilers	Oil-fired	>2,500,000 Btu/h	81.0% E_T

* Where E_C is combustion efficiency and E_T is thermal efficiency as defined in § 431.82.

(c) Each commercial packaged boiler listed in Table 2 to § 431.87 and manufactured on or after the effective date listed in Table 2 of this section, must meet the applicable energy conservation standard in Table 2.

TABLE 2 TO § 431.87—COMMERCIAL PACKAGED BOILER ENERGY CONSERVATION STANDARDS

Equipment type	Subcategory	Size category (input)	Efficiency level—Effective date: March 2, 2022 *
Steam Commercial Packaged Boilers	Gas-fired—natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	79.0% E_T
Steam Commercial Packaged Boilers	Gas-fired—natural draft	>2,500,000 Btu/h	79.0% E_T

* Where E_C is combustion efficiency and E_T is thermal efficiency as defined in § 431.82.

■ 6. Add a new paragraph (d) to § 431.97 to read as follows:

§ 431.97 Energy efficiency standards and their effective dates.

* * * * *

(d) Each water-cooled and evaporatively-cooled commercial package air conditioning and heating equipment with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h manufactured on or after January 10, 2011, shall meet the following standard levels:

(1) For equipment that utilizes electric resistance heat or without heating, the energy efficiency ratio must be not less than 11.0.

(2) For equipment that utilizes all other types of heating, the energy efficiency ratio must be not less than 10.8.

Note: The following appendix will not appear in the Code of Federal Regulations.

Department of Justice, Antitrust Division, Christine A. Varney, Assistant Attorney General, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645(f), *antitrust.atr@usdoj.gov*, *http://www.usdoj.gov/atr.*

May 8, 2009.

Eric J. Fygi, Acting General Counsel, Department of Energy, Washington, DC 20585.

Dear Acting General Counsel Fygi: I am responding to your March 30, 2009 letter seeking the views of the Attorney General about the potential impact on competition of proposed amended energy conservation standards for commercial packaged boilers and certain commercial packaged air-conditions and heat pumps. Your request was submitted pursuant to Section 325(0)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6295(0)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice leaving consumers with fewer competitive alternatives, placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers; or by inducing avoidable inefficiencies in production or distribution of particular products.

We have reviewed the proposed standards and the supplementary information submitted to the Attorney General, and attended the April 7, 2009 public hearing on the proposed standards.

We have concluded that the proposed standards are not likely to have an adverse effect on competition. In reaching this conclusion, we note the absence of any competitive concerns raised by industry participants at the hearing. Indeed, the efficiency levels in the proposed standards are based on a consensus recommendation submitted by efficiency advocacy groups and the trade association for manufacturers of commercial packaged boilers. Based on these facts, we believe the new standard would not likely reduce competition.

Sincerely,

Christine A. Varney,
Assistant Attorney General.

[FR Doc. E9–16774 Filed 7–21–09; 8:45 am]

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Federal Register

Wednesday,
July 22, 2009

Part III

Department of Energy

48 CFR Chapter 9

Department of Energy Acquisition Regulation: Technical Amendment; Final Rule

DEPARTMENT OF ENERGY

48 CFR Chapter 9

RIN 1991–AB62

Department of Energy Acquisition Regulation: Technical Amendment

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to make technical and administrative changes to the DEAR, including changes to conform to the Federal Acquisition Regulation (FAR), typographical errors, and correct other minor errors or omissions. Today's final rule does not alter substantive rights or obligations under current law.

DATES: *Effective Date:* This rule is effective August 21, 2009.

FOR FURTHER INFORMATION CONTACT: Barbara Binney at (202) 287–1340 or by e-mail at *barbara.binney@hq.doe.gov.*

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I. Background

The DEAR has typographical errors, outdated citations, missing words, acronyms that need to be spelled out, and other errors of a technical nature. The objective of today's rule is to correct errors and omissions in the existing DEAR and to conform the DEAR to the Federal Acquisition Regulation (FAR) naming and numbering conventions. None of these changes are substantive or of a nature to cause any added expense for DOE or its contractors.

II. Description of the Technical Amendments

Where appropriate throughout the DEAR, the authority citations have been revised to reflect current statutory authorities including National Nuclear Security Administration (NNSA) authority in 50 U.S.C. 2401, *et seq.*

Sections have been redesignated to conform DEAR section numbering with FAR section numbering.

Cross references in section headings that appear in the format ''(DOE coverage * * *)'' have been removed because in many instances the references have become outdated.

References to NNSA positions have been added in instances where NNSA may exercise acquisition authority independent of DOE.

Subpart headings have been added to maintain consistency with the FAR subpart headings. These subpart headings do not contain text and do not add any substantive changes.

Outdated or incorrect cross references to DEAR sections and clauses have been corrected. Where appropriate, outdated section or clause titles have been updated. Cross references to superceded DOE directives have been updated. Punctuations and capitalizations have been revised throughout for consistency. Titles and addresses have been updated.

In certain instances sections of the DEAR required so many corrections that we determined that for accuracy and simplicity it would be better to revise the entire section. Following are the detailed editing instructions for sections: 904.702, 923.7003, 933.103, 942.270–2, 952.216–7, 952.225–70, 970.0404–1, 970.1100–1, 970.5242–1, and 970.5244–1.

Subpart 904.702(b) is amended to add the complete clause title for 952.223–71, ''Integration of Environment Safety, and Health into Work Planning and Execution,'' and to delete the reference to the clause titled ''Nuclear Safety.'' The reference to 952.223–74, Nuclear Safety, clause was removed as it no longer exists.

Section 923.7003(a) is amended after ''appropriate'' by removing ''environmental safety and health program management'' and adding in its place ''Office of Health, Safety and Security.''

Section 923.7003(b) is amended by adding the clause title Integration of Environment, Safety, and Health into Work Planning and Execution after ''952.223–71'' and changing punctuation.

Section 923.7003(c) is amended by removing ''923.7002(b)'' and adding in its place ''923.7003(b)'' to correct the citation.

Section 923.7003(c) is amended by adding the two clause titles for 952.223–71 by adding ''Integration of Environment, Safety, and Health into Work Planning and Execution,''; and in two places after ''952.223–72'' by adding ''Radiation Protection and Nuclear Criticality,''.

Section 923.7003(d) is amended by removing ''either 923.7002(b) or 923.7002(c)'' and adding in its place ''923.7003(b) or 923.7003(c)'' to correct the citations.

Section 923.7003(d) is amended by adding the two clause titles for 952.223–71, ''Integration of Environment, Safety, and Health into Work Planning and Execution,''; and in two places after ''952.223–72'' by adding ''Radiation Protection and Nuclear Criticality,''.

Section 923.7003(d) is amended by removing ''Environment, Safety and Health'' and adding in its place ''Health, Safety, and Security.''

Section 923.7003(e) is amended by adding clause titles for 952.223–71, ''Integration of Environment, Safety, and Health into Work Planning and Execution,''; and for 952.223–72, ''Radiation Protection and Nuclear Criticality.''

Sections 923.7003(f) and 923.7003(g) are amended by removing ''48 CFR'' in both of these paragraphs in four places each; in paragraph (g) by removing ''970.1504–5(c)'' and adding in its place ''970.1504–8(c)''; in paragraph (g) by adding ''Requirements,'' after ''952.204–2, Security''; and capitalizing the first letter in each word for the clause title ''Nuclear Hazards Indemnity Agreement''.

Section 933.103(f) is amended by removing the first paragraph in (f); by redesignating paragraph (i)(1) as (i); by redesignating subparagraphs (i)(1)(i) through (iii) as (1), (2) and (3) respectively; and by removing subparagraph (i)(2). The first paragraph (f) is removed because it repeats a requirement from FAR 33.101(f).

Section 933.103(i) is amended in paragraph (i) by removing ''Head of Contracting Activity'' and adding in its place ''HCA''.

Section 933.103(j) is amended by removing the fourth sentence; and in the fifth sentence, remove ''parties'' and add in its place ''the protester and the Department.'' These changes are made to remove an internal procedure and to clarify who the parties are.

Section 933.103(k) is amended in the first sentence by redesignating ''(iii)'' as ''(iv)''; by removing the second sentence; and in the third sentence by removing the ''(1).'' The second sentence is removed because it is an internal procedure.

Section 942.270–2 is amended in the section title by using a lower case ''c'' for ''clause''; and in the first sentence,

by adding ''Technical Direction,'' after ''952.242–70.''

Section 952.216–7, Allowable cost and payment Alternate I, is removed. This duplicates FAR 16.307(a)(1) fourth sentence.

Section 952.225–70 clause in paragraph (b) is amended by adding after ''shall'' in the first sentence ''—'' and a line return; in subparagraph (1), capitalize the ''C'' in ''consider; in paragraph (b)(1), changing the punctuation and adding a line return after ''or''; and in paragraphs (b)(2), (b)(2)(i), and (b)(2)(ii), capitalize the first letter of the first word in each subparagraph.

In section 970.0404–1 the *Classified Information* definition is amended by removing reference to Executive Order 12356 and updating it with the current Executive Order 12958, Classified National Security Information, April 17, 1995, as amended.

Section 970.1100–1(a) is amended in the second sentence, by adding ''The'' before ''Office''; in the second sentence, by adding "'s'' after ''Policy''; in the second sentence, by removing ''Letter 91–2'' and adding in its place ''Seven Steps to Performance-Based Acquisition located at Web site *http://www.acquisition.gov/comp/seven_steps/home.html''*; and in the third sentence, by making the ''D'' in ''describe'' lower case after '':''. These changes are made for grammatical reasons and to update the Office of Federal Procurement Policy (OFPP) information on performance-based acquisition.

Section 970.5242–1 clause is amended in paragraphs (c)(2), (d) and (e)(3), by changing punctuation; in paragraph (c)(2)(i), (c)(2)(ii), (c)(2)(iii), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), (e)(3)(i), and (e)(3)(ii), by capitalizing the first letter of the first word in each paragraph; in paragraph (c)(2)(ii), by removing ''Department's'' and adding in its place ''Civilian''; and in paragraph (e), adding ''—'' after ''when''.

Section 970.5244–1 introductory text is amended by removing ''48 CFR 970.4402–5'' and adding in its place ''970.4403''.

Section 970.5244–1 clause is amended in paragraphs (e)(1), (e)(1)(i), and (r) by changing punctuation; and in paragraphs (e)(1), (i), (e)(1)(ii), (r)(1), (r)(2), and (r)(3), by capitalizing the first letter of the first word in each paragraph.

Section 970.5244–1 clause in paragraph (e)(4) is amended in the second sentence, by removing ''48 CFR 970.3102–3–21(b)'' and adding in its place ''48 CFR 31.205–26(e)''.

Section 970.5244–1 clause in paragraph (g) is amended in the first sentence, by removing ''48 CFR 52.225–3'' and adding in its place ''48 CFR 52.225–1''; and in the first sentence, by removing ''48 CFR 52.225–5'' and adding in its place ''48 CFR 52.225–9''.

Section 970.5244–1 clause in paragraph (q) is amended by adding after ''980.71'' '', Federal Management Regulation 41 CFR chapter 102,''; in paragraph (q)(5), and by removing ''48 CFR 908.7108'' and adding in its place ''48 CFR subpart 8.5''. These changes conform to the FAR convention and updates the Federal Management Regulation reference.

Section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) permits an agency to omit notice and comment from a rulemaking when the agency finds ''good cause'' to do so. Good cause exists when the agency finds that notice and comment would be ''impracticable, unnecessary, or contrary to the public interest.'' Today's rule is intended to correct non-substantive errors, remove typographical errors, correct out-dated references and citations, and to improve stylistic consistency. None of the amendments in this notice of final rulemaking are intended to alter substantive rights or obligations under current law. Nothing in this rule imposes or alters existing requirements on DOE contractors or other members of the public. Consequently, DOE has determined that notice and comment is unnecessary.

III. Procedural Requirements

A. Review Under Executive Order 12866

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

B. 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 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 United States 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 if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

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

Today's technical amendments do not alter any substantive rights or obligations. Today's rule makes corrections and updates references in the DEAR that apply to public contracts. No substantive rights or obligations are altered by today's technical amendment. Neither the Administrative Procedures Act nor any other law that requires this rule be proposed for public comment. Consequently, this rule is exempt from the requirements of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data have been cleared under OMB control number 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability 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 rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking makes technical amendments that do not alter any substantive rights or obligations. This rule does not impose any mandates.

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 rulemaking or policy that may affect family well-being. This rulemaking will have no 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 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 Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates 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, (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 rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

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. 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 rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Approval by the Office of the Secretary of Energy

Issuance of this rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 901, 903, 904, 905, 906, 908, 909, 911, 912, 913, 914, 915, 916, 917, 922, 923, 925, 928, 931, 932, 933, 935, 936, 939, 941, 942, 947, 950, 951, 952, and 970

Government procurement.

Issued in Washington, DC, on July 13, 2009.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Department of Energy.

David O. Boyd,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

■ 1. Authority citations are revised:

■ a. For parts 901, 903, 904, 905, 906, 908, 909, 912, 913, 914, 915, 916, 917, 922, 923, 925, 928, 931, 932, 933, 935, 936, 939, 941, 942, 947, 951, and 952, the authority citations are revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ b. For parts 911, 950 and 970, the authority citations are revised to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Section 901.602–3 is amended by revising the section heading to read as follows:

901.602–3 Ratification of unauthorized commitments.

* * * * *

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

903.104–3 [Redesignated as 903.104–1]

■ 3. Redesignate 903.104–3 as 903.104–1.

■ 4. Amend the introductory text of newly designated section 903.104–1 by removing the reference ''48 CFR (FAR) 3.104–4(d)—'' and adding in its place ''48 CFR 3.104–2(b)(3)—''.

903.104–10 [Redesignated as 903.104–7]

■ 5. Redesignate 903.104–10 as 903.104–7.

■ 6. Amend newly designated section 903.104–7 by revising the section heading to read as follows:

903.104–07 Violations or possible violations.

* * * * *

■ 7. Remove ''48 CFR 3.104–10'' wherever it occurs in newly designated 903.104–7 and add in its place ''48 CFR 3.104–7''.

■ 8. Add in newly designated 903.104–7, first sentence, commas, after ''(2)'' and ''Policy Act''.

■ 9. Add in newly designated 903.104–7 ''the General Counsel for National Nuclear Security Administration (NNSA),'' in the second sentence, after ''Naval Reactors Offices;''.

903.408–1 [Redesignated as 903.405]

■ 10. Redesignate section 903.408–1 as 903.405.

■ 11. Newly redesignated section 903.405 is amended by revising the section heading to read as follows:

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

* * * * *

903.502 [Amended]

■ 12. Section 903.502 is amended by removing the paragraph (b) designation at the beginning of the paragraph.

■ 13. Revise the heading for subpart 903.9 to read as follows:

Subpart 903.9—Whistleblower Protections for Contractor Employees

903.901, 903.902, and 903.903 [Redesignated 903.900, 903.901 and 903.902]

■ 14. Redesignate sections 903.901, 903.902, and 903.903 as sections 903.900, 903.901 and 903.902, respectively.

■ 15. Newly designated section 903.900 is amended by revising the heading to read as follows:

903.900 Scope of subpart.

* * * * *

PART 904—ADMINISTRATIVE MATTERS

■ 16. Section 904.402 is amended by:

■ a. Removing in paragraph (a), ''DOE's'' and adding in its place ''Department of Energy's (DOE)'';

■ b. Revising the last sentence in paragraph (c)(1);

■ c. Removing ''The clause'' in paragraph (c)(2), at the beginning of the first sentence, and adding in its place ''The 952.204–76 clause'' and removing ''and the clause'', in the first sentence, and adding in its place ''and the 952.223–76 clause'';

■ d. Removing the ':'' at the end of the introductory text of paragraph (c)(3) and adding ''—'' in its place; and

■ e. Adding in paragraph (c)(3)(i), ''952.204–76'' before the first usage of ''clause'' and, adding ''952.223–76'' before the second usage of ''clause''.

The revision reads as follows:

904.402 General.

* * * * *

(c)(1) * * * The clause prescribed at 904.404(d)(6) (952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information) or the clause prescribed at 923.7003(f) (952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health) shall be used for this purpose unless the clause prescribed at 970.1504–5(b)(1) (970.5215–3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts) is used.

* * * * *

■ 17. Section 904.404 is amended by:

■ a. Revising the section heading;

■ b. Removing ''DOE N 142.1.'' in paragraph (d)(3), second sentence, and adding in its place ''DOE Order 142.3 or its successor.''; and

■ c. Revising paragraph (d)(6).

The revisions read as follows:

904.404 Solicitation provision and contract clause.

(d) * * *

(6) Except as prescribed in 970.1504–5(b), the contracting officer shall insert the clause at 952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, in all contracts that contain the clause at 952.204–2, Security, but that do not contain the clause at 952.250–70, Nuclear Hazards Indemnity Agreement.

* * * * *

■ 18. Section 904.702 is revised to read as follows:

904.702 Applicability.

(b) Contracts containing the clause at 952.223–71 Integration of Environment Safety, and Health into Work Planning and Execution, or the Radiation Protection and Nuclear Criticality clause at 952.223–72, must also include the Preservation of Individual Occupational Radiation Exposure Records clause at 952.223–75 which will necessitate retention of records in accordance with schedules contained in applicable DOE Directives in the records management series, rather than those found at 48 CFR subpart 4.7.

■ 19. The heading for subpart 904.8 is revised to read as follows:

Subpart 904.8—Government Contract Files

904.803 [Amended]

■ 20. Section 904.803 is amended by removing the word ''procurement'' and adding in its place the word ''acquisition''.

■ 21. Add a new section 904.804 to read as follows:

904.804 Closeout of contract files.

■ 22. Section 904.804–1 is amended by revising the section heading and adding ''(HCA)'' in paragraph (a) after the word ''Activity'' to read as follows:

904.804–1 Closeout by the office administering the contract.

* * * * *

■ 23. Revise section 904.805 to read as follows:

904.805 Storage, handling, and disposal of contract files.

Contract files shall be disposed of in accordance with applicable DOE Order 243.1. (See current version.)

■ 24. Revise the section heading for section 904.7000 to read as follows:

904.7000 Scope of subpart.

* * * * *

904.7002 [Amended]

■ 25. Section 904.7002 is amended by:

■ a. Removing ''following:'' at the end of the introductory text of the definition of ''*foreign interest*'' and adding in its place ''following—''; and

■ b. Removing ''person,'' in paragraph (3) of the definition of ''*foreign interest*'', and adding in its place ''person;'' .

904.7003 [Amended]

■ 26. Section 904.7003 is amended by:
■ a. Adding ''Facility Clearance,'' in paragraph (c), second sentence after ''952.204–73'';
■ b. Removing the punctuation ''.'' in paragraph (d), first sentence, after the word ''unless'' and adding in its place ''—'';
■ c. Removing ''48 CFR 952.204–73,'' in paragraph (d)(1) and adding in its place ''952.204–73, Facility Clearance;''; and
■ d. Removing ''48 CFR'' in the paragraph (d)(2).

904.7101 [Amended]

■ 27. Section 904.7101 is amended by:
■ a. Removing the last sentence in the definition of *Entity controlled by a foreign government,* and adding in its place ''See subpart 925.7 for a statement of the prohibition on certain foreign purchases.''
■ b. Removing the '','' at the end of the sentence in paragraph (4), in the definition of *Proscribed information.*

904.7102 [Amended]

■ 28. Section 904.7102 is amended by:
■ a. Removing the ''.'' in paragraphs (a) introductory text, and (b) introductory text, last sentences, and adding in its place ''—''; and
■ b. Removing ''DEAR 952.204–73'' in paragraph (e), and adding in its place, ''952.204–73, Facility Clearance''.

904.7103 [Amended]

■ 29. Section 904.7103 is amended by:
■ a. Removing ''48 CFR'' in paragraphs (a) and (b);
■ b. Adding '', Facility Clearance.'' after ''952.204–73'' in paragraph (a); and
■ c. Adding '', Security.'' after ''952.204–2'' in paragraph (b).

904.7201 [Amended]

■ 30. Section 904.7201 is amended by adding '', Public Affairs,'' after ''952.204–75.''

■ 31. The heading for subchapter B is revised to read as follows:

Subchapter B—Competition Acquisition Planning

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 32. Section 908.802 is amended by revising the section heading and removing ''48 CFR 952.208–70. '' in paragraph (b) and adding in its place, ''952.208–70, Printing, in all contracts.''

The revision reads as follows:

908.802 Policy.

* * * * *

■ 33. Section 908.1104 is amended by revising the section heading, redesignating paragraph (e) as (f), and removing ''48 CFR'' in newly designated paragraph (f).

The revision reads as follows:

908.1104 Contract clauses.

* * * * *

908.7105 [Amended]

■ 34. Section 908.7105 is amended by removing ''DOE–PMR 41 CFR 109–25.302–2.'' at the end of the sentence and adding in its place ''DOE–PMR 41 CFR 109–25.302.''

908.7106 [Amended]

■ 35. Section 908.7106 is amended by removing ''DOE–PMR 41 CFR 109–25.302–2.'' in paragraph (a) at the end of the sentence and adding in its place ''DOE–PMR 41 CFR 109–25.302.''; and removing ''FPMR 41 CFR 101–26.407 and'' in paragraph (b).

908.7108 [Removed and Reserved]

■ 36. Section 908.7108 is removed and reserved.

908.7111 [Amended]

■ 37. Section 908.7111 is amended by removing ''Commanding General, Headquarters, U.S. Army Material Development and Readiness Command, 5001 Eisenhower Avenue, Alexandria, VA 22333.'' in paragraph (c), and adding in its place ''Commanding General, Headquarters, U.S. Army Materiel Command, 9301 Chapek Road, Fort Belvoir, VA 22060–5527.''

■ 38. Section 908.7113 is revised to read as follows:

908.7113 Calibration services.

Orders for calibration services may be placed with the National Institute of Standards and Technology, 100 Bureau Drive, Stop 2300, Gaithersburg, MD 20899–2300, by either DOE acquisition offices or its authorized contractors. Copies of the letters authorizing contractors to order calibration services on behalf of DOE shall be sent to the National Institute of Standards and Technology, Attention: ''Calibration Services.''

■ 39. Section 908.7115 is amended by revising paragraph (a) to read as follows:

908.7115 Forms.

(a) DOE forms shall be obtained by DOE offices in accordance with the DOE Guide 242.1–1, DOE Forms Management, for use with DOE Order 200.1, Information Management Program.

* * * * *

PART 909—CONTRACTOR QUALIFICATIONS

■ 40. Add a new section 909.104 to subpart 909.1 to read as follows:

909.104 Standards.

909.104–1 [Amended]

■ 41. Section 909.104–1, paragraph (h) is amended by removing ''48 CFR''.

■ 42. Section 909.104–3 is amended by revising the section heading and removing ''DOE'' in paragraph (e) at the beginning of the paragraph, and adding in its place, ''*Guaranteeing corporate entities.* The Department of Energy (DOE)''.

The revision reads as follows:

909.104–3 Application of standards.

* * * * *

909.400 [Amended]

■ 43. Section 909.400 is amended by removing the ''.'' at the end of paragraph (a) and adding in its place a '';''.

909.403 [Amended]

■ 44. Section 909.403 is amended by:
■ a. Adding ''*Debarring and suspending official,* for the DOE, the designees are:'' after the introductory paragraph;
■ b. Removing the words ''*Debarring Official.* The'' and adding in its place ''(1) *Debarring Official* means the''; and
■ c. Removing the words ''*Suspending Official.* The'' and adding in its place ''(2) *Suspending Official* means the''.

■ 45. Section 909.406–2 is amended by:
■ a. Revising the section heading to read as set forth below;
■ b. Removing ''DOE'' in the introductory text of paragraph (c);
■ c. Removing ''; and'' in paragraph (c)(1) after ''subcontract'' and adding in its place a period; and
■ d. Removing the '';'' at the end of the sentence in paragraph (d)(1), after ''9.406–3(c)'', and adding in its place a period.

909.406–2 Causes for debarment.

* * * * *

■ 46. Section 909.406–3 is amended by revising the section heading to read as follows:

909.406–3 Procedures.

* * * * *

909.406–6 [Redesignated 909.406–70]

■ 47. Section 909.406–6 is redesignated as 909.406–70, and newly designated 909.406–70 is amended by removing ''48 CFR (DEAR)'' in paragraph (b), two occurrences.

■ 48. Add a new section 909.407 to subpart 909.4 to read as follows:

909.407 Suspension.

■ 49. Section 909.407–2 is amended by:
■ a. Revising the section heading;
■ b. Removing the ''.'' at the end of the introductory text of paragraph (d) and adding in its place ''—'';
■ c. Removing ''48 CFR (DEAR)'' in paragraphs (d)(1) and (d)(2);
■ d. Removing the ''.'' in paragraph (d)(1) and adding in its place a semicolon; and
■ e. Removing the ''.'' at the end of the sentence in paragraph (d)(2) and adding in its place ''; or''.

The revision reads as follows:

909.407–2 Causes for suspension.

* * * * *

■ 50. Section 909.407–3 is amended by revising the section heading, removing the ''.'' after ''shall'' in paragraph (b)(3) and adding in its place ''—''; and removing ''48 CFR (DEAR)'' in paragraphs (b)(1), (b)(2) and (e)(1)(iv).

The revision reads as follows:

909.407–3 Procedures.

* * * * *

■ 51. Section 909.503 is revised to read as follows:

909.503 Waiver.

Heads of Contracting Activities are delegated the authorities in 48 CFR 9.503 regarding the waiver of organizational and consultant conflicts of interest requirements.

■ 52. Section 909.504 is amended by revising the section heading and by removing ''48 CFR'' in paragraph (e).

The revision reads as follows:

909.504 Contracting officer responsibilities.

* * * * *

■ 53. Section 909.507–1 is amended by revising the section heading and removing ''48 CFR'' in paragraph (e).

The revision reads as follows:

909.507–1 Solicitation provisions.

* * * * *

909.507–2 [Amended]

■ 54. Section 909.507–2 is amended by removing ''48 CFR'' in paragraphs (a)(1), (a)(2) and (b).

PART 911—DESCRIBING AGENCY NEEDS

911.604 [Amended]

■ 55. Section 911.604(b) is amended by adding a '','' after ''Energy)''.

PART 912—ACQUISITION OF COMMERCIAL ITEMS

■ 56. Section 912.302 is revised to read as follows:

912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) The waiver required by 48 CFR 12.302(c) shall be in writing and approved by the local procurement manager or individual appointed for that purpose by the local procurement manager.

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

■ 57. Section 913.307 is amended by revising the section heading to read as follows:

913.307 Forms.

* * * * *

PART 914—SEALED BIDDING

■ 58. Add a new section 914.404 to subpart 914.4 to read as follows:

914.404 Rejection of bids.

914.404–1 [Amended]

■ 59. Section 914.404–1, paragraph (c), is amended by removing ''Procurement Executive has'' and adding in its place ''Senior Procurement Executives have''.

914.407–3 [Amended]

■ 60. Section 914.407–3(e) is amended in the first and second sentences by removing ''Procurement Executive has,'' and add in its place ''Senior Procurement Executives have''.

914.407–4 [Amended]

■ 61. Section 914.407–4 is amended by removing ''Procurement Executive has'' and adding in its place ''Senior Procurement Executives have'' in the first sentence; and adding ''appropriate Senior'' before the word ''Procurement'' in the second sentence.

914.408–2 [Redesignated]

■ 62. Section 914.408–2 is redesignated as 914.409–2.

PART 915—CONTRACTING BY NEGOTIATION

■ 63. Section 915.200 is revised to read as follows:

915.200 Scope of subpart.

The 48 CFR subpart 15.2 is not applicable to Program Opportunity Notices for Commercial Demonstrations (See subpart 917.72) or Program Research and Development Announcements (See subpart 917.73).

■ 64. Add a new section 915.207 to subpart 915.2 to read as follows:

915.207 Handling proposals and information.

■ 65. Section 915.207–70 is amended by revising the section heading and removing ''DOE'' in paragraph (f)(3), in the last sentence and adding in its place ''Senior''.

The revision reads as follows:

915.217–70 Handling proposals and information during evaluation.

* * * * *

■ 66. Section 915.305 is amended by revising the section heading to read as follows:

915.305 Proposal evaluation.

* * * * *

■ 67. Add a new section 915.404 to subpart 915.4 to read as follows:

915.404 Proposal analysis.

■ 68. Section 915.404–2 is amended by revising the section heading, removing ''48 CFR'' in paragraph (c)(1), and redesignating paragraphs (c)(2) as (c)(2)(i) and (e)(6) as (c)(2)(ii).

The revision reads as follows:

915.404–2 Information to support proposal analysis.

* * * * *

915.404–2–70 [Amended]

■ 69. Section 915.404–2–70 is amended by removing the ''.'' in paragraph (a), and adding in its place ''—''.

■ 70. Section 915.404–4 is amended by revising the section heading to read as follows:

915.404–4 Profit.

* * * * *

915.404–70–2 [Redesignated 915.404–4–70–2]

■ 71. Section 915.404–70–2 is redesignated as 915.404–4–70–2 and paragraphs (a) and (b) are amended by removing ''48 CFR''.

915.404–4–70–4 [Amended]

■ 72. Section 915.404–4–70–4 is amended by removing the ''.'' in paragraph (b) introductory text, and adding in its place ''—''; and removing ''48 CFR'' in paragraph (d), and adding in its place ''subpart''.

915.404–4–70–5 [Amended]

■ 73. Section 915.404–4–70–5(d) is amended by removing ''48 CFR''.

915.404–4–70–6 [Amended]

■ 74. Section 915.404–4–70–6 is amended by removing ''48 CFR''.

915.404–4–70–7 [Amended]

■ 75. Section 915.404–4–70–7 is amended by removing ''48 CFR'' in paragraphs (a) and (b).

915.404–4–71–1 [Amended]

■ 76. Section 915.404–4–71–1 is amended by removing the '','' in paragraph (a)(1) and adding in its place a '';''; adding a '';'' in paragraph (a)(2) after the word ''performance''; and removing the word ''for'' in paragraph (b) before the word ''thereunder''.

915.404–4–71–3 [Amended]

■ 77. Section 915.404–4–71–3 is amended by removing ''48 CFR'' in paragraphs (a) and (d); removing the ''.'' in paragraph (b) introductory text, and adding in its place ''—''; adding ''—'' in paragraph (b)(1), at the end of the sentence; and removing the '','' in paragraphs (b)(1)(i), (ii) and (iii), and adding in its place a '';''.

915.404–4–71–4 [Amended]

■ 78. Section 915.404–4–71–4(a) is amended by removing ''48 CFR''.

915.404–4–71–5 [Amended]

■ 79. Remove ''48 CFR'' in 915.404–4–71–5, all occurrences, in paragraphs (a), (e)(1), and (e)(3).

915.404–4–71–6 [Amended]

■ 80. Section 915.404–4–71–6 is amended by removing ''(See 48 CFR 936.70.)'' in paragraph (b)(4); removing ''as defined in 48 CFR 936.7201'' in paragraph (b)(6); and removing ''48 CFR'' in paragraph (c).

915.404–4–72 [Amended]

■ 81. Section 915.404–4–72 is amended by removing ''48 CFR'' in all occurrences in paragraphs (a) introductory text, (a)(1), and (b).

■ 82. Add a new section 915.408 to subpart 915.4 to read as follows:

915.408 Solicitation provisions and contract clauses.

■ 83. Section 915.408–70 is amended by revising the section heading and removing ''48 CFR'' in all occurrences.

The revision reads as follows:

915.408–70 Key Personnel clause.

* * * * *

915.602 [Amended]

■ 84. Section 915.602 is amended by removing paragraph (b).

■ 85. Section 915.603 is amended by revising the section heading and redesignating paragraph (e) as (f).

The revision reads as follows:

915.603 General.

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■ 86. Section 915.605 is amended by revising the section heading and in paragraph (b)(5) removing ''48 CFR'' and adding in its place ''subpart''.

The revision reads as follows:

915.605 Content of unsolicited proposals.

* * * * *

■ 87. Section 915.606 is amended by revising the section heading; removing ''Coordinator'' from paragraph (b) and adding in its place ''Manager''; and removing ''(PGH)'' from paragraph (b) and adding in its place ''P.O. Box 10940, MS 921–107''.

The revision reads as follows:

915.606 Agency procedures.

* * * * *

■ 88. Section 915.607 is revised to read as follows:

915.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(c) DOE's cost participation policy, at subpart 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

PART 916—TYPES OF CONTRACTS

916.307 [Amended]

■ 89. Section 916.307 is amended by redesignating paragraph (j) as paragraph (g); and removing ''The contracting officer shall insert'' at the beginning of the sentence, and adding in its place ''Insert''.

916.404–2 [Redesignated as 916.405–2]

■ 90. Redesignate section 916.404–2 as 916.405–2.

■ 91. Add a new section 916.405 to read as follows:

916.405 Cost-reimbursement incentive contracts.

■ 92. The heading for section 916.504 is revised to read as follows:

916.504 Indefinite-quantity contracts.

* * * * *

■ 93. Section 916.505 is amended by revising it to read as follows:

916.505 Ordering.

(b)(6)(i) The Director, Office of Contract Management, Office of Procurement and Assistance Management, is designated as the DOE Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(6). The Director, Office of Acquisition and Supply Management, is the designated NNSA Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(6).

(ii) The Heads of Contracting Activities shall designate a senior manager to serve as the Contracting Activity Ombudsman for task and delivery order contracts. If, for any reason, the Contracting Activity Ombudsman is unable to execute the duties of the position, the Head of the Contracting Activity shall designate an Acting Contracting Activity Ombudsman.

(iii) The Contracting Activity Ombudsman shall—

(A) Be independent of the contracting officer who awarded and/or is administering the contract under which a complaint is submitted;

(B) Not assume any duties and responsibilities pertaining to the evaluation or selection of an awardee for the issuance of an order under a multiple award, task or delivery order contract;

(C) Review complaints from contractors awarded a task or delivery order contract;

(D) Collect all facts from the cognizant organizations or individuals that are relevant to a complaint submitted to ensure that the complainant and all contractors were afforded a fair opportunity to be considered for the order issued in accordance with the procedures set forth in each awardees' contract;

(E) Maintain a written log to track each complaint submitted from receipt through disposition;

(F) Ensure that no information is released which is determined to be proprietary or is designated as source selection information; and

(G) Resolve complaints at the contracting activity for which they have cognizance.

(iv) If, upon review of all relevant information, the Contracting Activity Ombudsman determines that corrective action should be taken, the Contracting Activity Ombudsman shall report the determination to the cognizant contracting officer. Issues which cannot be so resolved should be forwarded to the DOE Ombudsman.

916.601 [Removed and Reserved]

■ 94. Section 916.601 in subpart 916.6 is removed and reserved.

PART 917—SPECIAL CONTRACTING METHODS

■ 95. Section 917.600, paragraph (a) is revised and paragraph (b) is amended by removing ''48 CFR''.

The revision reads as follows:

917.600 Scope of subpart.

(a) This subpart implements 48 CFR subpart 17.6, Management and

Operating Contracts. Departmental policies, procedures, provisions and clauses to be used in the award and administration of management and operating contracts that either implement or supplement the Federal Acquisition Regulation and parts 901 through 952 of this chapter are contained in part 970.

* * * * *

917.7200 [Amended]

■ 96. Section 917.7200(a) is amended by removing the word ''non-nuclear'' and adding in its place ''non nuclear''.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

922.103–4 [Amended]

■ 97. Section 922.103–4(d) is amended by:

■ a. Removing the introductory heading ''*Approvals.*'' at the beginning of the paragraph;

■ b. Removing ''DOE'' and adding in its place ''Department of Energy (DOE)'' in paragraph (d)(1) introductory text;

■ c. Removing the '':'' and adding in its place ''—'' at the end of paragraph (d)(1) introductory text;

■ d. Removing the word ''means'' and adding in its place ''means—'' in paragraph (d)(1)(i), second sentence; and

■ e. Removing ''advance,'' and adding in its place ''advance;'' in paragraph (d)(1)(i)(A).

922.103–5 [Amended]

■ 98. Section 922.103–5 is amended in the last sentence by adding the word ''subpart'' after the word ''See''.

922.802 [Removed and Reserved]

■ 99. Section 922.802 is removed and reserved.

■ 100. The heading for Part 923 is revised to read as follows:

PART 923—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 101. Section 923.405 is amended by revising the section heading to read as follows:

923.405 Procedures.

* * * * *

■ 102. The heading for subpart 923.5 is revised to read as follows:

Subpart 923.5—Drug-Free Workplace

923.570–1 [Amended]

■ 103. Section 923.570–1 is amended by removing the '':'' and adding in its place ''—'' in paragraph (a) introductory text; removing the '','' in paragraph (a)(1), and adding in its place a '';'' and removing the ''.'' at end of sentence; and removing the ''.'' in paragraph (a)(2), and adding in its place ''—''.

923.570–2 [Amended]

■ 104. Section 923.570–2 is amended in paragraphs (a) and (b) by removing ''48 CFR'' in three places.

923.570–3 [Amended]

■ 105. Section 923.570–3 is amended by removing ''48 CFR'' in paragraph (a) and (b)(2); removing the ''.'' in paragraph (b), and adding in its place ''—''; and removing ''the provision at 970.5204–57; or'' in paragraph (b)(2), and adding in its place ''the clause at 970.5223–4, Workplace Substance Abuse Programs at DOE Sites; or''.

■ 106. Subpart 923.70 is amended by revising the subpart heading to read as follows:

Subpart 923.70—Environmental, Energy and Water Efficiency, Renewable Energy Technologies, and Occupational Safety Programs

923.7001 [Amended]

■ 107. Section 923.7001 is amended by removing the paragraph designation ''(a)''.

■ 108. Section 923.7002 is amended by revising the section heading, the first sentence in paragraph (a)(1) and by removing in paragraph (a)(5), ''Environment, Safety and Health'' and adding in its place ''Health, Safety and Security''.

The revisions read as follows:

923.7002 Worker safety and health.

(a)(1) Except when the clause prescribed at 970.1504–8(c) is used, the clauses entitled ''952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health'' or ''952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health'' implement the requirements of section 234C of the Atomic Energy Act for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns. * * *

* * * * *

■ 109. Section 923.7003 is revised to read as follows:

923.7003 Contract clauses.

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate Office of Health, Safety and Security personnel.

(b) When work is to be performed at a facility where the DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 952.223–71, Integration of Environment, Safety, and Health into Work Planning and Execution, shall be used in such contract or subcontract if conditions (b)(1) through (3), are satisfied—

(1) DOE work is segregated from the contractor's or subcontractor's other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.

(c) In facilities not meeting the requirements of paragraph (b) of this section and which are a production or utilization facility where there is use or possession of source, special nuclear, or byproduct materials, DOE policy is not to enforce radiological safety and health standards pursuant to the contract or subcontract but rather to rely upon Nuclear Regulatory Commission (NRC) licensing requirements (including agreements with States under section 274 of the Atomic Energy Act). Pursuant to this policy, neither the clause found at 952.223–71, Integration of Environment, Safety, and Health into Work Planning and Execution, nor 952.223–72, Radiation Protection and Nuclear Criticality, is to be incorporated in the contracts or subcontracts for work at such facilities. Notwithstanding this general policy with respect to facilities not meeting the requirements of paragraph (b) of this section, the Secretary or his designee may determine in special cases, that DOE needs to enforce radiological safety and health standards pursuant to the contract or subcontract (see paragraph (d) of this section). When such a determination is made, the clause found at 952.223–72, Radiation Protection and Nuclear Criticality, shall be included in the contract or subcontract.

(d) In facilities not meeting the requirements of paragraph (b) or (c) of this section and where there is a machine capable of producing ionizing radiation, it is DOE policy not to regulate such activity where it is adequately regulated by a State or other Federal agency. In such cases, neither clause 952.223–71, Integration of Environment, Safety, and Health into Work Planning and Execution, nor 952.223–72, Radiation Protection and Nuclear Criticality, shall be incorporated in the contract. Where the contracting officer, with appropriate environmental, safety and health advice determines that no State or other Federal agency exists to adequately regulate the operation and/or use of such machines, the clause found at 952.223–72, Radiation Protection and Nuclear Criticality, shall be included in the contract. The Assistant Secretary for Health, Safety and Security (or designee) shall be consulted to determine if a non-agreement State or a facility located in a non-agreement State has been reviewed by any other DOE office to establish that the State agency has the essential authority and resources for enforcing the radiation protection standards. This is to assure reasonable consistency in the assessment of radiation protection in non-agreement States and subsequent use of 952.223–72.

(e) In a situation where the contractor or subcontractor is performing DOE work at more than one location, inclusion of either, or both, 952.223–71, Integration of Environment, Safety, and Health into Work Planning and Execution, and 952.223–72, Radiation Protection and Nuclear Criticality, may be appropriate. In such cases, the contract or subcontract must include language to specify the extent of applicability of each clause used. For example, with a parenthetical: (Applicable only to work performed at a contractor site which has 952.223–71 or 952.223–72 clause in its contract or subcontract).

(f) Except as prescribed in 970.1504–8(c), the contracting officer shall insert the clause at 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, in all contracts that contain both the clause at 952.204–2, Security Requirements, and the clause at 952.250–70, Nuclear Hazards Indemnity Agreement.

(g) Except as prescribed in 970.1504–8(c), the contracting officer shall insert the clause at 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health, in all contracts that do not contain the clause at 952.204–2, Security Requirements, but that do contain the clause at 952.250–70, Nuclear Hazards Indemnity Agreement.

PART 925—FOREIGN ACQUISITION

925.102 [Redesignated as 925.103]

■ 110. Redesignate 925.102 as 925.103.

■ 111. Revise newly designated 925.103 to read as follows:

925.103 Exceptions.

(a) Contracting officers may make the determination required by FAR 25.103(a), provided such determination is factually supported in writing. If the contract is estimated to exceed $1 million, the Head of the Contracting Activity shall approve the determination.

925.105 and 925.108 [Removed]

■ 112. Sections 925.105 and 925.108 in subpart 925.1 are removed.

925.204 [Removed]

■ 113. Section 925.204 in subpart 925.2 is removed.

■ 114. The heading of subpart 925.7 is revised to read as follows:

Subpart 925.7—Prohibited Sources

925.702 [Redesignated as 925.701–70]

■ 115. Redesignate section 925.702 as 925.701–70.

■ 116. Revise newly designated section 925.701–70 to read as follows:

925.701–70 Prohibited sources.

No contract may be awarded to a company owned by an entity controlled by a foreign government if performance of the contract will require access to proscribed information. See subpart 904.71 for additional guidance.

925.7003 [Amended]

■ 117. Section 925.7003 is amended by removing the '':'' in paragraph (a) introductory text and adding in its place ''—''; removing the '','' in paragraph (a)(1) and adding in its place '';''; and removing the '':'' in paragraph (b) introductory text and adding in its place ''—''.

PART 928—BONDS AND INSURANCE

■ 118. The heading for subpart 928.1 is revised to read as follows:

Subpart 928.1—Bonds and Other Financial Protections

■ 119. Add a new section 928.101 to subpart 928.1 to read as follows:

928.101 Bid guarantees.

■ 120. Add a new section 928.103 to subpart 928.1 to read as follows:

928.103 Performance and payment bonds for other than construction contracts.

928.301 [Amended]

■ 121. Section 928.301 is amended by adding ''part'' before ''950''.

928.370 [Amended]

■ 122. Section 928.370(b) introductory text is amended by removing the '':'' and adding in its place ''—''.

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 123. Add a new section 931.205 to subpart 931.2 to read as follows:

931.205 Selected costs.

■ 124. Section 931.205–19 is amended by revising the section heading; redesignating paragraph (h) as (f); removing ''48 CFR''; and adding '', Insurance-litigation and claims,'' after ''952.231–71''.

The revision reads as follows:

931.205–19 Insurance and Indemnification.

* * * * *

931.205–32 [Amended]

■ 125. Section 931.205–32 is amended by removing the word ''Precontract'', in the section heading, and paragraphs (b)(1) and (b)(4), and adding in its place ''Pre-contract''; and by removing the word ''precontract'' in paragraphs (a), (b) introductory text, (b)(2), and (b)(4), and adding in its place ''pre-contract''.

■ 126. Section 931.205–33 is amended by revising the heading to read as follows:

931.205–33 Professional and consultant service costs.

* * * * *

■ 127. Section 931.205–47 is amended by revising the heading and removing the '';'' in paragraph (h)(2) introductory text and adding in its place ''—''.

The revision reads as follows:

931.205–47 Costs related to legal and other proceedings.

* * * * *

PART 932—CONTRACT FINANCING

■ 128. Add a new section 932.006 to part 932 to read as follows:

932.006 Reduction or suspension of contract payments upon finding of fraud.

■ 129. The heading in subpart 932.1 is revised to read as follows:

Subpart 932.1—Non-Commercial Item Purchase Financing

■ 130. Section 932.102 is amended by revising the heading to read as follows:

932.102 Description of contract financing methods.

* * * * *

■ 131. Add a new section 932.304 to subpart 932.2 to read as follows:

932.304 Procedures.

■ 132. Add a new section 932.501 to subpart 932.5 to read as follows:

932.501 General.

932.605 [Amended]

■ 133. Section 932.605(b) is amended in the first sentence by removing ''DOE'' and adding in its place ''Department of Energy (DOE)''.

932.7003 [Amended]

■ 134. Section 932.7003(e) introductory text is amended by removing the ''\:'' and adding in its place ''—''.

932.7004–3 [Amended]

■ 135. Section 932.7004–3 introductory text is amended by removing the ''\:'' and adding in its place ''—''.

PART 933—PROTESTS, DISPUTES, AND APPEALS

Subpart 933.1—Protests

■ 136. Section 933.102 is amended by revising the section heading; and in paragraph (b), adding ''(HCA)'' after ''Activities''.

The revision reads as follows:

933.102 General.

* * * * *

■ 137. Section 933.103 is revised to read as follows:

933.103 Protests to the agency.

(i) Protests filed with the contracting officer before or after award shall be decided by the HCA except for the following cases, which shall be decided by the Senior Procurement Executive:

(1) The protester requests that the protest be decided by the Senior Procurement Executive.

(2) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made.

(3) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on Department of Energy (DOE) acquisition policy.

(j) The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests. In those situations where the parties are not able to achieve resolution, the Department favors the use of alternative dispute resolution (ADR) techniques to resolve protests. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral party. Both the protester and the Department must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR techniques to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iv). The Senior Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in paragraph (i) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

■ 138. Section 933.104 is amended by revising the section heading; removing ''GAO'' in paragraph (b) (first occurrence) and adding in its place ''Government Accountability Office (GAO)''; and removing ''Head of the Contracting Activity'' in paragraphs (b), in two places, and (c), and adding in its place ''HCA''.

The revision reads as follows:

933.104 Protests to GAO.

* * * * *

933.106 [Amended]

■ 139. Section 933.106 is amended by removing ''48 CFR'' in paragraphs (a), (b), and (c).

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

935.010 [Amended]

■ 140. Section 935.010(c) is amended by removing after ''thereto,'' the remainder of the first sentence and adding in its place ''electronically to the Department of Energy (DOE) Energy Link System (E-link) at *http://www.osti.gov/.*''

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

936.202 [Amended]

■ 141. Section 936.202 is amended by removing, in paragraph (d) ''the regulations prescribed by the General Accounting Office in sections 3020–10 and 3030 of Title 7 of GAO Manual for Guidance of Federal Agencies'' and adding in its place ''internal financial procedures''; and removing ''therefor'' in paragraph (e) after ''payments''.

936.602–70 [Amended]

■ 142. Section 936.602–70 is amended by removing ''required by 936.601,'' in the introductory paragraph; removing the ''\:'' in paragraph (a) in the first line and adding in its place ''—''; removing the ''\:'' in paragraph (a)(7) and adding in its place ''; or''; and removing the ''\:'' in paragraph (b)(1) introductory text and adding in its place ''—''.

Subpart 936.7—[Removed and Reserved]

■ 143. Subpart 936.7 consisting of 936.702 is removed and reserved.

PART 939—ACQUISITION OF INFORMATION TECHNOLOGY

939.7001 [Removed and Reserved]

■ 144. Section 939.7001 is removed and reserved.

939.7002 [Amended]

■ 145. Section 939.7002 is amended by removing ''48 CFR'' in paragraph (b), second sentence; removing the ''\:'' at the end of paragraph (c) introductory text and adding in its place ''—''; and removing the '','' in paragraph (c)(1) and adding in its place ''\;''.

PART 941—ACQUISITION OF UTILITY SERVICES

941.201–71 [Amended]

■ 146. Section 941.201–71 is amended by removing ''48 CFR''.

PART 942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 147. Part 42 title is revised to read as set forth above.

■ 148. Section 942.270–2 is revised to read as follows:

942.270–2 Contract clause.

The clause at 952.242–70, Technical Direction, or a clause substantially the same, may be inserted in solicitations and contracts when a designated Contracting Officer's Representative will

issue technical direction to the contractor under the contract.

■ 149. Add a new section 942.705 to subpart 942.7 to read as follows:

942.705 Final indirect cost rates.

■ 150. Section 942.705–1 is amended by revising the heading to read as follows:

942.705–1 Contracting officer determination procedure.

* * * * *

■ 151. Section 942.705–3 is amended by revising the heading to read as follows:

942.705–3 Educational institutions.

* * * * *

942.705 [Amended]

■ 152. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the words in the right column:

Section	Remove	Add
942.705–1(a)(3)	"Policy"	"Procurement and Assistance Policy"
942.705–3(a)(2)	"Policy"	"Procurement and Assistance Policy"
942.705–4	"Policy"	"Procurement and Assistance Policy"
942.705–5	"Policy"	"Procurement and Assistance Policy"

PART 947—TRANSPORTATION

Subpart 947.5—[Removed]

■ 153. Subpart 947.5 is removed.

947.7001 [Amended]

■ 154. Section 947.7001 is amended by removing "DOE Order 551.1" and adding in its place "DOE Order 551.1C, or its successor".

947.7002 [Amended]

■ 155. Section 947.7002 is amended by removing "48 CFR".

■ 156. The heading for part 950 is revised to read as follows:

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

950.7000 [Amended]

■ 157. Section 950.7000 is amended by removing "DOE" and adding in its place "the Department of Energy (DOE)".

950.7002 [Amended]

■ 158. Section 950.7002 is amended by removing the ":" following the introductory text of the definition of *Person indemnified* and adding in its place "—".

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

951.101 [Amended]

■ 159. Section 951.101 is amended by removing "DOE" and adding in its place "Department of Energy (DOE)".

951.102 [Amended]

■ 160. Section 951.102 is amended by removing in paragraph (c)(1) "Property" and adding in its place "Resource".

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.000 [Amended]

■ 161. Section 952.000 is amended by removing the first "DOE" and adding in its place "Department of Energy (DOE)" and removing the second "DOE contract" and adding in its place "Department of Energy Acquisition Regulation".

952.203–70 [Amended]

■ 162. Section 952.203–70 introductory text is amended by removing "48 CFR".

952.204–2 [Amended]

■ 163. Section 952.204–2 clause is amended by:

■ a. Revising the date of the clause to read as set forth below; and

■ b. Removing "in effect on the date of award." in paragraph (b) and adding in its place "as incorporated into the contract."; and adding ", Facility Clearance," in paragraph (l) in the second sentence after "DEAR 952.204–73".

The revision reads as follows:

952.204–2 Security requirements.

* * * * *

SECURITY (AUG 2009)

* * * * *

952.204–72 [Amended]

■ 164. Section 952.204–72 is amended by removing "Classification" and adding in its place "Classification/Declassification".

952.204–73 [Amended]

■ 165. Section 952.204–73 is amended by adding a "," after "Interests" in the introductory text; and removing the ":" in paragraphs (b)(1) introductory text and (c) introductory text and adding in its place "—".

952.204–75 [Amended]

■ 166. Section 952.204–75 introductory text is amended by removing "48 CFR".

952.204–76 [Amended]

■ 167. Section 952.204–76 is amended by removing "48 CFR DEAR" in the introductory text; and removing the word "Restricted" in clause paragraph (a)(3) and adding in its place "restricted".

952.204–77 [Amended]

■ 168. Section 952.204–77 clause is amended by removing the ":" in paragraph (b) introductory text and adding in its place "—"; and removing the "," in paragraph (b)(1).

952.209–8 [Amended]

■ 169. Section 952.209–8 introductory text is amended by removing "48 CFR".

952.209–72 [Amended]

■ 170. Section 952.209–72 is amended by:

■ a. Revising the date of the clause to read as set forth below;

■ b. Adding, in clause paragraph (b)(1)(i), an "e" to "therefor" and removing "DEAR 9.507–2" and adding in its place "48 CFR 909.507–2";

■ c. Removing the ":" at the end of clause paragraph (b)(2)(i) introductory text and adding in its place "—".

■ d. Removing "FAR part 13" in Alternate I, paragraph (f)(1) and adding in its place "48 CFR part 13";

■ e. Removing "FAR 37.201" in Alternate I, paragraph (f)(1) and adding in its place "48 CFR 2.101"; and

■ f. Removing "DEAR 909.507–1" in Alternate I, paragraph (f)(2) and adding in its place "48 CFR 909.507–1".

The revision reads as follows:

952.209–72 Organizational conflicts of interest.

* * * * *

ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)

* * * * *

952.211–70 [Amended]

■ 171. Section 952.211–70 introductory text is amended by removing the ''.'' at the end of the introductory paragraph and adding in its place ''\:''; and removing ''officer'' in the clause and adding in its place ''Officer.'' removing ''(End of clause)'' at the end of the provision and adding in its place ''(End of provision)''.

952.211–71 [Amended]

■ 172. Section 952.211–71 introductory text is amended by removing the ''.'' at the end of the introductory paragraph and adding in its place ''\:''

952.215–70 [Amended]

■ 173. Section 952.215–70 is amended by:

■ a. Removing ''48 CFR'' in the introductory text; and

■ b. Removing in clause paragraph (a) ''48 CFR'' and adding in its place ''DEAR''.

■ 174. Section 952.216–7 is revised to read as follows:

952.216–7 Allowable cost and payment.

As prescribed in 916.307(a), when contracting with a commercial organization modify paragraph (a) of the clause at FAR 52.216–7 by adding the phrase ''as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR),'' after FAR subpart 31.2.

952.216–15 [Amended]

■ 175. Section 952.216–15 clause is amended by:

■ a. Revising the date of the clause alternate to read as set forth below; and

■ b. Removing ''(j)'' after ''916.307'' and adding in its place ''(g)''; and removing ''31.3'' and adding in its place ''31.4''.

The revision reads as follows:

952.216–15 Predetermined indirect cost rates.

* * * * *

Alternate (AUG 2009):

* * * * *

■ 176. The section heading for 952.223 is revised to read as follows:

952.223 Clauses related to environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace.

952.223–71 [Amended]

■ 177. Section 952.223–71 introductory text is amended by removing ''923.7002'' and adding in its place ''923.7003''; and removing ''48 CFR''.

952.223–72 [Amended]

■ 178. Section 952.223–72 introductory text is amended by removing ''923.7002'' and adding in its place ''923.7003''.

952.223–75 [Amended]

■ 179. Section 952.223–75 introductory text is amended by removing, ''The contracting officer shall insert this'' and adding in its place ''As prescribed at 923.7003(h), insert the''.

952.223–76 [Amended]

■ 180. Section 952.223–76 is amended by:

■ a. Revising the date of the clause to read as set forth below;

■ b. Removing in the introductory text ''48 CFR (DEAR) 923.7002(f)'' and adding in its place ''923.7003(f)''.

■ c. Removing ''data'' in clause paragraph (a)(3) and adding in its place ''Data'';

■ d. Removing ''48 CFR 952.223–76 (b)(2)'' in clause paragraph (b)(1) and adding in its place ''paragraph (b)(2) of this clause''.

■ e. Removing ''48 CFR 923.7001(b)'' in clause paragraph (b)(1) and adding in its place ''48 CFR 923.7002(a)(2)''; and

■ f. Removing ''WS&H only)'' in clause paragraph (b)(1) in the last sentence and adding in its place ''worker safety and health (WS&H) only''.

The revision reads as follows:

952.223–76 Conditional payment of fee or profit—safeguarding restricted data and other classified information and protection of worker safety and health.

* * * * *

CONDITIONAL PAYMENT OF FEE OR PROFIT—SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH (AUG 2009)

* * * * *

952.223–77 [Amended]

■ 181. Section 952.223–77 is amended by:

■ a. Revising the date of the clause to read as set forth below; and

■ b. Removing in the introductory text ''48 CFR (DEAR) 923.7002(g)'' and adding in its place ''923.7003(g)'' and removing ''48 CFR 952.223–77 (b)(2)'' in paragraph (b)(1) and adding in its place ''paragraph (b)(2) of this clause''.

The revision reads as follows:

952.223–77 Conditional payment of fee or profit—protection of worker safety and health.

* * * * *

CONDITIONAL PAYMENT OF FEE OR PROFIT—PROTECTION OF WORKER SAFETY AND HEALTH (AUG 2009)

* * * * *

952.224–70 [Removed]

■ 182. Section 952.224–70 is removed.

952.225–70 [Amended]

■ 183. Section 952.225–70 paragraph (b) is revised to read as follows:

952.225–70 Subcontracting for nuclear hot cell services.

* * * * *

(b) In selecting a competitive offer for a first-tier subcontract acquisition of nuclear hot cell services, the contractor shall—

(1) Consider neither costs related to the decommissioning of nuclear waste facilities nor costs related to the storage and disposal of nuclear waste; or

(2) Add these costs to offers of foreign companies, if—

(i) One or more of the offers is submitted by a United States company and includes costs related to the decommissioning of nuclear facilities and costs related to the storage and disposal of nuclear waste because it is subject to such cost; and

(ii) One or more of the offers is submitted by a foreign company and does not include these types of costs. (A foreign company might not be subject to such costs or might not have to include these types of cost in its offer if the firm is subsidized in decommissioning activity or storage and disposal of nuclear waste, or a foreign government is performing the activities below the actual cost of the activity.)

* * * * *

952.231–71 [Amended]

■ 184. Section 952.231–71 is amended by:

■ a. Revising the date of the clause to read as set forth below;

■ b. Removing in the introductory text, ''48 CFR 931.205–19'' and adding in its place, ''931.205–19(f)''.

■ c. Removing, in the clause heading, ''Insurance-Litigation'' and adding in its place ''Insurance—Litigation''

■ d. Removing the '','' in paragraph (h)(1) and (h)(2) and adding in its place a ''\;''; and

■ e. Removing ''unreimbursable'' in paragraph (k) and adding in its place ''non-reimbursable''.

The revision reads as follows:

952.231–71 Insurance-litigation and claims.

* * * * *

INSURANCE–LITIGATION AND CLAIMS (AUG 2009)

* * * * *

952.233–2 [Amended]

■ 185. Section 952.233–2 is amended by removing ''48 CFR'' in the introductory text; and removing ''General Accounting'' in paragraph (c) and adding in its place ''Government Accountability''.

952.233–4 [Amended]

■ 186. Section 952.233–4 clause is amended by:
■ a. Revising the date of the provision to read as set forth below; and
■ b. Removing ''General Accounting'' in paragraph (a) and adding in its place ''Government Accountability''.

The revision reads as follows:

952.233–4 Notice of protest file availability.

* * * * *

NOTICE OF PROTEST FILE AVAILABILITY (AUG 2009)

* * * * *

952.233–5 [Amended]

■ 187. Section 952.233–5 is amended by removing ''48 CFR'' in the introductory text; and adding ''48 CFR'' before ''933.103'' in the clause.

952.235–70 [Removed]

■ 188. Section 952.235–70 is removed.

952.235–71 [Amended]

■ 189. Section 952.235–71 is amended by:
■ a. Removing ''48 CFR Part'' in the introductory text;
■ b. Removing the ''.'' in clause paragraph (c) in the first sentence and adding in its place ''—'';
■ c. Adding ''of Energy (DOE)'' in clause paragraph (c) introductory text after ''Department''; and
■ d. Removing the '','' in clause paragraph (c)(3) after ''or''.

952.242–70 [Amended]

■ 190. Section 952.242–70 is amended by removing ''48 CFR'' in the introductory text; and removing the ''.'' in paragraphs (c) introductory text and (e) introductory text and adding in its place ''—''.

952.247–70 [Amended]

■ 191. Section 952.247–70 is amended by:
■ a. Revising the date of the clause to read as set forth below; and
■ b. Removing ''48 CFR'' in the introductory text; and removing ''DOE Order 551.1,'' in the clause and adding in its place ''Department of Energy (DOE) Order 551.1C, or its successor''.

The revision reads as follows:

952.247–70 Foreign travel.

* * * * *

FOREIGN TRAVEL (AUG 2009)

* * * * *

952.250–70 [Amended]

■ 192. Section 952.250–70 clause is amended by removing the ''.'' in paragraphs (e)(2)(iv)(A) introductory text and (e)(3) introductory text, and adding in its place ''—''.

952.251–70 [Amended]

■ 193. Section 952.251–70 is amended by:
■ a. Revising the date of the clause to read as set forth below;
■ b. Removing ''48 CFR 951.70'' in the introductory text and adding in its place ''951.7002''; and
■ c. Removing ''Military Traffic Management Command (MTMC)'' in clause paragraph (e), first sentence, and adding in its place ''Surface Deployment and Distribution Command (SDDC)''.

The revision reads as follows:

952.251–70 Contractor employee travel discounts.

* * * * *

CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)

* * * * *

■ 194. In the table below, for introductory text for each section indicated in the left column, remove the punctuation indicated in the middle column from where it appears in the section, and add the punctuation in the right column:

Section	Remove	Add
952.204–2	.	:
952.204–70	.	:
952.204–71	.	:
952.204–72	.	:
952.204–73	.	:
952.204–75	.	:
952.204–76	.	:
952.217–70	.	:
952.208–7	.	:
952.208–70	.	:
952.211–70	.	:
952.211–71	.	:
952.223–72	.	:
952.223–75	.	:
952.223–76	.	:
952.223–77	.	:
952.225–70	.	:
952.236–71	.	:
952.236–72	.	:
952.242–70	.	:
952.250–70	.	:
952.251–70	.	:

■ 195. Add ''(End of provision)'' after the following provisions: 952.204–73, 952.233–2, 952.233–4, and 952.233–5.

■ 196. Add ''(End of clause)'' at the end of the following clauses: 952.204–2, 952.204–70, 952.204–71, 952.204–72, 952.208–7, 952.208–70, 952.217–70, 952.223–72, 952.223–75, 952.225–70, 952.231–70, 952.236–71, 952.237–70, and 952.251–70.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.0100 [Amended]

■ 197. Section 970.0100 is amended by removing in the third sentence, ''48 CFR''; and removing ''DEAR'' in the third sentence before ''Part 970''.

970.0309–1 [Amended]

■ 198. Section 970.0309–1 is amended by removing ''48 CFR''.

970.0370–1 [Amended]

■ 199. Section 970.0370–1 is amended by:
■ a. Removing ''DOE'' in paragraph (a) and adding in its place ''the Department of Energy (DOE)'';
■ b. Removing ''48 CFR'' in paragraph (b) and (d);
■ c. Removing the ''.''in paragraph (b) introductory text and adding in its place ''—'';
■ d. Adding ''and'' in paragraph (b)(8), after '';'';
■ e. Removing the ''.'' in paragraph (b)(9), and adding in its place ''.''; and
■ f. Removing paragraph (b)(10).

970.0371–9 [Amended]

■ 200. Section 970.0371–9 is amended by removing ''48 CFR'' in both places.

■ 201. In section 970.0404–1, revise the definition for *Classified Information* to read as follows:

970.0404–1 Definitions.

* * * * *

Classified Information means any information or material that is owned by or produced for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12958, Classified National Security Information, April 17, 1995, as amended, or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

* * * * *

970.0404–2 [Amended]

■ 202. Section 970.0404–2 is amended by adding ''(DOE)'' in paragraph (a) in the first sentence, after ''Energy'';

adding ''subpart'' before ''904.4'', ''904.70'' and ''904.71'' in paragraph (a); and removing ''48 CFR'' in paragraph (c) in the first sentence.

970.0404–3 [Amended]

■ 203. Section 970.0404–3(b) is amended by removing ''48 CFR'' and adding in its place ''subpart''.

970.0404–4 [Amended]

■ 204. Section 970.0404–4(b) is amended by removing ''48 CFR'' in both places.

970.0407–1–2 [Amended]

■ 205. Section 970.0407–1–2 is amended by removing ''48 CFR''.

970.0407–1–3 [Amended]

■ 206. Section 970.0407–1–3 is amended by removing ''48 CFR''.

970.0470–1 [Amended]

■ 207. Section 970.0470–1(d) is amended by removing ''48 CFR''.

970.0470–2 [Amended]

■ 208. Section 970.0470–2 is amended by removing ''DEAR'' in the first sentence.

970.0801–1 [Redesignated as 970.0801–2]

■ 209. Redesignate 970.0801–1 as 970.0801–2.

■ 210. Revise newly designated section 970.801–2 to read as follows:

970.0801–2 Policy.

The provisions of 48 CFR subpart 8.1, 41 CFR 101–43 (Federal Property Management Regulation), and 41 CFR 109–43, (Department of Energy (DOE) Property Management Regulation) apply to DOE's management and operating contracts.

■ 211. Section 970.0808 is revised to read as follows:

970.0808 Acquisition of printing and related supplies.

970.0808–1 [Redesignated]

■ 212. Redesignate 970.0808–1 as 970.0808–00.

■ 213. Amend newly designated section 970.0808–00 by revising the section heading to read as follows:

970.0808–00 Scope.

* * * * *

■ 214. The heading for subpart 970.09 is revised to read as follows:

Subpart 970.09—Contractor Qualifications

970.0905 [Amended]

■ 215. Section 970.0905 is amended by revising the section heading; and removing ''48 CFR'' in the paragraph.

The revision reads as follows:

970.0905 Organizational and consultant conflicts of interest.

* * * * *

970.0970–1 [Amended]

■ 216. Section 970.0970–1 is amended by removing ''DOE'' in paragraph (b) in the first sentence and adding in its place ''The Department of Energy (DOE)''.

970.0970–2 [Amended]

■ 217. Section 970.0970–2 is amended by removing ''48 CFR''.

■ 218. Section 970.1100–1 is amended by revising paragraph (a) to read as follows:

970.1100–1 Performance-based contracting.

(a) It is the policy of the Department of Energy (DOE) to use, to the maximum extent practicable, performance-based contracting methods in its management and operating contracts. The Office of Federal Procurement Policy's Seven Steps to Performance-Based Acquisition located at Web site *http://www.acquisition.gov/comp/seven_steps/home.html* provides guidance concerning the development and use of performance-based contracting concepts and methodologies that may be generally applied to management and operating contracts. Performance-based contracts: Describe performance requirements in terms of results rather than methods of accomplishing the work; use measurable (i.e., terms of quality, timeliness, quantity) performance standards and objectives and quality assurance surveillance plans; provide performance incentives (positive or negative) where appropriate; and specify procedures for award or incentive fee reduction when work activities are not performed or do not meet contract requirements.

* * * * *

970.1170–1 [Amended]

■ 219. Section 970.1170–1 is amended by removing ''NNSA'' and adding in its place ''the National Nuclear Security Administration (NNSA) Senior''.

970.1170–2 [Amended]

■ 220. Section 970.1170–2 is amended by removing ''48 CFR''.

970.1504–1–2 [Amended]

■ 221. Section 970.1504–1–2 is amended by removing the '':'' in paragraph (e)(2) introductory text and adding in its place ''—''; and removing ''48 CFR'' in paragraphs (f) and (h).

970.1504–1–3 [Amended]

■ 222. Section 970.1504–1–3 is amended by:

■ a. Removing, in paragraph (b)(1), ''48 CFR 970.31'' and adding in its place ''subpart 970.31'';

■ b. Removing ''48 CFR'' in paragraph (b)(2) in three places; and

■ c. Removing ''48 CFR'' in paragraphs (c)(1), (c)(2), and (c)(3), both occurrences.

970.1504–1–4 [Amended]

■ 223. Section 970.1504–1–4 is amended by adding ''subpart'' after ''48 CFR'' in paragraphs (a) in the first sentence, and (e) in the second sentence and removing ''48 CFR'' in paragraphs (b), in the second sentence, (c)(3), and (f).

970.1504–1–5 [Amended]

■ 224. Section 970.1504–1–5 is amended by removing ''48 CFR'' in paragraph (b) and removing the '':'' in paragraphs (b) introductory text and (b)(3) introductory text and adding in its place ''—''.

970.1504–1–6 [Amended]

■ 225. Section 970.1504–1–6 is amended by removing the '':'' in paragraph (b) introductory text and adding in its place ''—''.

970.1504–1–7 [Amended]

■ 226. Section 970.1504–1–7 is amended by:

■ a. Removing the '':'' in paragraph (b) introductory text and adding in its place ''—'';

■ b. Removing ''48 CFR'' in paragraph (b)(4);

■ c. Removing ''48 CFR 91504–1–5'' in paragraph (d) in the third sentence and adding in its place ''915.404–4–71–5''; and

■ d. Removing ''48 CFR'' in paragraphs (d), in the last sentence, and (e), in two places.

970.1504–1–8 [Amended]

■ 227. Section 970.1504–1–8 paragraphs (a) and (c) are amended by removing ''48 CFR''.

970.1504–1–9 [Amended]

■ 228. Section 970.1504–1–9 is amended by removing the '':'' in paragraphs (e)(1) introductory text, (e)(2) introductory text, and (e)(3)

introductory text, and adding in its place ''—''; and removing ''48 CFR'' in paragraph (h).

970.1504–1–10 [Amended]

■ 229. Section 970.1504–1–10 is amended by removing ''48 CFR'' in two places.

970.1504–1–11 [Amended]

■ 230. Section 970.1504–1–11 is amended by removing ''48 CFR'' before ''970''.

970.1504–2 [Amended]

■ 231. Section 970.1504–2 is amended in paragraph (a)(4) by removing ''obligational'' and adding in its place, ''obligation'', and in paragraph (c) by removing ''48 CFR'' in both places.

970.1504–5 [Amended]

■ 232. Section 970.1504–5 is amended by removing ''48 CFR'' in paragraphs (a) introductory text, (b)(1), (b)(2), (c), and (d).

970.1707–2 [Amended]

■ 233. Section 970.1707–2 is amended by removing the '':'' in the introductory text and adding in its place ''—''; and removing the '','' after ''and'' in paragraph (d).

970.1707–3 [Amended]

■ 234. Section 970.1707–3 is amended by:

■ a. Removing the '':'' in paragraph (b) introductory text and adding in its place ''—'';

■ b. Removing the '','' after ''and'' in paragraph (b)(3);

■ c. Removing the ''.'' in paragraph (c) introductory text and adding in its place ''—''; and

■ d. Removing the '','' after ''; and'' in paragraph (c)(1) at the end of the paragraph.

970.2200 [Amended]

■ 235. Section 970.2200 is amended by adding ''(DOE)'' after ''Energy''.

970.2201–2–2 [Amended]

■ 236. Section 970.2201–2–2 is amended by removing ''48 CFR''.

970.2204–1–1 [Amended]

■ 237. Section 970.2204–1–1 is amended by:

■ a. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
970.2204–1–1(a) introductory text and (a)(2)	''noncovered''	''non-covered''.
970.2204–1–1 (c)(1) introductory text, (c)(2)(i), (c)(4), and (c)(5)	''noncovered''	''non-covered''.
970.2204–1–1 (d)	''noncovered''	''non-covered''.

And

■ b. Removing in paragraphs (c)(1)(i), (c)(1)(ii) and (c)(1)(iii), the '';'' and adding in its place a ''.''.

970.2210 [Amended]

■ 238. Section 970.2210 is amended by removing ''48 CFR'' and adding ''(x)'' after ''970.5244–1''.

970.2270 [Amended]

■ 239. Section 970.2270(b)(2) introductory text is amended by removing the ''.'' at the end of the paragraph and adding in its place ''—''.

■ 240. The heading for subpart 970.23 is revised to read as follows:

Subpart 970.23—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety and Drug-Free Work Place

970.2303–1 [Redesignated as 970.2303–2–70]

■ 241. Redesignate 970.2303–1 as 970.2303–2–70.

■ 242. Amend newly designated 970.2303–2–70 by adding ''970.5215–3,'' before ''Conditional'' in the first sentence of paragraph (c)(1); and by removing ''Environment, Safety and Health'' from paragraph (c)(2)(ii) and adding in its place ''Health, Safety and Security''.

970.2303–2 [Redesignated as 970.2303–3]

■ 243. Redesignate 970.2303–2 as 970.2303–3.

■ 244. Amend newly designated 970.2303–3(a) introductory text by removing the ''.'' and adding in its place ''—''.

■ 245. The section heading for 970.2304 is revised to read as follows:

970.2304 Use of recovered materials and biobased products.

■ 246. Section 970.2304–2 is amended by removing ''48 CFR (DEAR)'' in the first and second sentences and removing ''.'' at the end of the introductory text and adding in its place ''—''.

970.2305–4 [Amended]

■ 247. Section 970.2305–4(a) is amended by removing ''48 CFR''.

970.2306 [Amended]

■ 248. Section 970.2306 is amended by removing ''48 CFR'' in paragraph (a) before ''970.5223–4'' and removing ''48 CFR'' in paragraph (b)(2).

970.2803–1 [Amended]

■ 249. Section 970.2803–1 is amended by:

■ a. Removing ''extrastatutory'' in paragraph (a)(2)(iii), and adding in its place ''extra-statutory'';

■ b. Removing ''Office of Contract and Resource Management'' in paragraphs (b)(1) introductory text, (b)(2)(iv), and (b)(3) and adding in its place, ''Office of Resource Management''; and

■ c. Removing the ''.'' in paragraph (b)(2) introductory text and adding in its place ''—''.

970.2803–2 [Amended]

■ 250. Section 970.2803–2 is amended by removing ''48 CFR''.

970.2902–1 [Redesignated as 970.2902–3]

■ 251. Redesignate 970.2902–1 as 970.2902–3 and revise the section heading to read as follows:

970.2902–1 Other Federal tax exemptions.

* * * * *

■ 252. Amend newly designated section 970.2902–3 by removing the first ''DOE'' from paragraph (a) and adding in its place ''the Department of Energy (DOE)''; and by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively.

970.2903–1 [Redesignated as 970.2903–2]

■ 253. Redesignate section 970.2903–1 as 970.2903–2 and revise the section heading to read as follows:

970.2903–2 Application of State and local taxes to the Government.

* * * * *

■ 254. Amend newly designated 970.2903–2 by removing the ''.'' from the introductory text and adding in its place ''—''; by adding ''and'' after ''exemptions;'' in paragraph (a); and by

removing the ''::'' and adding in its place ''—'' in paragraph (b) introductory text.

■ 255. Section 970.2904–1 is amended by revising paragraph (a) and removing ''48 CFR'' in paragraph (b).

The revision reads as follows:

970.2904–1 Management and operating contracts.

(a) Pursuant to 48 CFR 29.401–4(b), the clause at 48 CFR 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, is applicable to management and operating contracts that meet the three conditions stated. The contracting officer shall modify paragraph (b) of the clause to replace the phrase ''Allowable Cost and Payment'' with the phrase ''Payments and Advances.''

* * * * *

■ 256. The heading for subpart 970.30 is revised to read as follows:

970.30 Cost Accounting Standards Administration.

■ 257. Section 970.3002–1 is amended by revising the heading to read as follows:

970.3002–1 CAS applicability.

* * * * *

■ 258. Section 970.3101–9 is amended by revising the heading to read as follows:

970.3101–9 Advance agreements.

* * * * *

■ 259. Section 970.3101–10 is amended by revising the heading and removing ''48 CFR'' in paragraphs (a) and (b).

The revision reads as follows:

970.3101–10 Indirect cost rate certification and penalties on unallowable costs.

* * * * *

970.3102–3–70 [Amended]

■ 260. Section 970.3102–3–70 is amended by removing ''48 CFR'' in paragraphs (a) introductory text and (a)(3)(i) and removing the ''::'' in paragraph (a)(3) introductory text and adding in its place ''—''.

■ 261. Section 970.3102–05 is amended by revising the heading to read as follows:

970.3102–05 Selected costs.

* * * * *

■ 262. Section 970.3102–05–4 is amended by revising the heading and removing ''48 CFR'' from paragraph (d).

The revision reads as follows:

970.3102–05–4 Bonding costs.

* * * * *

■ 263. Section 970.3102–05–6 is amended by revising the heading to read as follows:

970.3102–05–6 Compensation for personal services.

* * * * *

■ 264. Section 970.3102–05–18 is amended by revising the heading to read as follows:

970.3102–05–18 Independent research and development and bid and proposal costs.

* * * * *

970.3102–05–19 [Amended]

■ 265. Section 970.3102–05–19 is amended by removing ''48 CFR''.

■ 266. Section 970.3102–05–22 is amended by revising the heading to read as follows:

970.3102–05–22 Lobbying and political activity costs.

* * * * *

■ 267. Section 970.3102–05–28 is amended by revising the heading to read as follows:

970.3102–05–28 Other business expenses.

* * * * *

970.3102–05–30 [Redesignated as 970.3102–05–30–70]

■ 268. Redesignate 970.3102–05–30 as 970.3102–05–30–70.

■ 269. Amend newly designated 970.3102–05–30–70(b) introductory text by removing the ''::'' and adding in its place ''—''.

■ 270. Add a new section 970.3102–05–30 to subpart 970.31 to read as follows:

970.3102–05–30 Patent costs.

■ 271. Section 970.3102–05–33 is amended by revising the heading to read as follows:

970.3102–05–33 Professional and consultant service costs.

* * * * *

■ 272. Section 970.3102–05–46 is amended by revising paragraph (a)(5) to read as follows:

970.3102–05–46 Travel costs.

(a) * * *

(5) An advance agreement (see 48 CFR 31.109 and 970.3101–9) with respect to compliance with paragraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

* * * * *

■ 273. Section 970.3102–05–47 is amended by revising the heading to read as follows:

970.3102–05–47 Costs related to legal and other proceedings.

* * * * *

970.3102–05–70 [Amended]

■ 274. Section 970.3102–05–70 is amended by removing ''48 CFR''.

970.3170 [Amended]

■ 275. Section 970.3170 is amended by removing ''48 CFR'' from the introductory text.

970.3200 [Amended]

■ 276. Section 970.3200 is amended by removing ''DOE'' and adding in its place ''the Department of Energy (DOE)''.

970.3200–1–1 [Amended]

■ 277. Section 970.3200–1–1 is amended by removing ''48 CFR''.

970.3204–1 [Amended]

■ 278. Section 970.3204–1 is amended by adding ''for Non-Commercial Items'' after ''Advance Payments'' in paragraph (a) and removing the ''::'' in paragraph (c) introductory text and adding in its place ''—''.

970.3270 [Amended]

■ 279. Section 970.3270 is amended by removing ''48 CFR'' before ''970'' in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (b)(1), and (b)(2) and adding ''— Modifications'' after ''Data'' in paragraph (a)(2) in the second sentence.

970.3400–1 [Amended]

■ 280. Section 970.3400–1 is amended by removing ''DOE'' (first occurrence) and adding in its place ''the Department of Energy (DOE)''.

970.3500 [Amended]

■ 281. Section 970.3500 is amended by adding ''(DOE)'' after ''Energy''.

970.3501–1 [Amended]

■ 282. Section 970.3501–1 is amended by removing ''48 CFR'' in paragraph (c)(2); and removing ''nonsponsor'' in paragraph (b)(3), and adding in its place, ''non-sponsor''.

970.3501–2 [Amended]

■ 283. Section 970.3501–2 is amended by removing ''nonsponsor'' and adding in its place, ''non-sponsor''.

970.3501–3 [Amended]

■ 284. Section 970.3501–3 is amended by removing ''48 CFR 970.1702–1(b)'' in paragraph (b) introductory text and adding in its place ''970.1706–1(b).

970.3501–4 [Amended]

■ 285. Section 970.3501–4 is amended by removing ''48 CFR''.

970.3605–1 [Amended]

■ 286. Section 970.3605–1 is amended by removing ''in'' before ''48 CFR'' and adding in its place ''at''.

970.3605–2 [Amended]

■ 287. Section 970.3605–2 is amended by removing ''in 48 CFR'' and adding in its place ''at''.

970.3770–1 [Amended]

■ 288. Section 970.3770–1 is amended by removing the first ''DOE'' and adding in its place ''the Department of Energy (DOE)''.

970.4102–1 [Amended]

■ 289. Section 970.4102–1 is amended by:
■ a. Removing the first ''DOE'' in paragraph (a) and adding in its place ''the Department of Energy (DOE)'';
■ b. Removing ''directives in subseries 4540 (Public Services).'' in paragraph (b) in the second sentence and adding in its place ''Order 430.2, or its successor.''; and
■ c. Revising paragraph (c) to read as follows:

970.4102–1 Policy.

* * * * *

(c) The requirements of 48 CFR part 41, this section, and DOE Order 430.2, or its successor, shall be applied to a subcontract level acquisition for furnishing utility services to a facility owned or leased by DOE.

970.4207–03–02 [Amended]

■ 290. Section 970.4207–03–02 is amended by:
■ a. Removing ''48 CFR'' wherever it appears in paragraph (a) introductory text;
■ b. Removing the '','' in paragraph (a)(2) introductory text and adding in its place ''—'';
■ c. Removing ''Department's'' in paragraph (a)(2)(ii) and adding in its place ''Civilian''; and
■ d. Removing ''was'' in paragraph (a)(2)(iii), and adding in its place ''Was''.

970.4207–03–70 [Amended]

■ 291. Section 970.4207–03–70 is amended by removing ''48 CFR''.

■ 292. Section 970.4207–05–01 is amended by revising the section heading and removing the '':'' in paragraph (b)(4) introductory text and adding in its place ''—''.

The revision reads as follows:

970.4207–05–01 Contracting officer determination procedure.

* * * * *

970.4302–1 [Amended]

■ 293. Section 970.4302–1 is amended by removing ''48 CFR''.

970.4401–1 [Amended]

■ 294. Section 970.4401–1 is amended by adding ''(DOE)'' after ''Energy'' in paragraph (a); and removing the '':'' in paragraphs (b) introductory text and (b)(4) introductory text and adding in its place ''—''.

970.4401–2 [Amended]

■ 295. Section 970.4401–2 is amended by removing the '':'' in paragraph (a) introductory text and adding in its place ''—''.

970.4401–3 [Amended]

■ 296. Section 970.4401–3 is amended by removing the '':'' in paragraph (a)(1) introductory text and adding in its place ''—''.

970.4402–2 [Amended]

■ 297. Section 970.4402–2 is amended by removing the '':'' in paragraphs (d) introductory text and (d)(2) introductory text and adding in its place ''—''.

970.4402–3 [Amended]

■ 298. Section 970.4402–3 is amended by:
■ a. Removing the '':'' in paragraphs (a) introductory text, (b) introductory text, and (c)(1) introductory text and adding in its place ''—'';
■ b. Removing ''therefor'' in paragraph (a)(3) in the second sentence, and adding in its place ''therefore'';
■ c. Removing the '','' in paragraph (b)(1) and adding in its place a '';'';
■ d. Removing ''48 CFR 970.3102–3–21'' in paragraph (c)(1)(i) and adding in its place ''48 CFR 31.205–26(e);''; and
■ e. Removing ''48 CFR'' the second occurrence in paragraph (c)(1)(ii).

970.4402–4 [Amended]

■ 299. Section 970.4402–4 is amended by removing the '':'' in paragraph (a) introductory text and adding in its place ''—''.

■ 300. The heading to subpart 970.50 is revised to read as follows:

Subpart 970.50—Extraordinary Contractual Actions and the Safety Act

970.5004 [Redesignated as 970.5001]

■ 301. Redesignate section 970.5004 as 970.5001.

970.5004–1 [Redesignated as 970.5001–4]

■ 302. Redesignate section 970.5004–1 as 970.5001–4.

■ 303. Amend newly designated 970.5001–4 by adding ''Alternate I,'' after ''85–804,''.

970.5070–1 [Amended]

■ 304. Section 970.5070–1 is amended by removing ''DOE'' from paragraph (a) and adding in its place ''the Department of Energy (DOE)''; and removing ''48 CFR'' from paragraph (b) and adding in its place ''subpart''.

970.5070–2 [Amended]

■ 305. Section 970.5070–2 is amended by adding a ''—'' after ''be'' at the end of the introductory text; and removing the '','' in paragraph (a) and adding in its place a '';''.

970.5070–3 [Amended]

■ 306. Section 970.5070–3 is amended in paragraph (a), in two places, and in paragraph (b) by removing ''48 CFR''.

970.5203–1 [Amended]

■ 307. Section 970.5203–1 is amended by removing ''48 CFR'' in both places in the introductory text, and in clause paragraph (a)(4), in the last sentence, by adding ''48 CFR'' before ''970.5232–3''.

970.5203–2 [Amended]

■ 308. Section 970.5203–2 introductory text is amended by removing ''48 CFR''.

970.5203–3 [Amended]

■ 309. Section 970.5203–3 is amended by removing ''48 CFR'' in the introductory text.

970.5204–1 [Amended]

■ 310. Section 970.5204–1 introductory text is amended by removing ''48 CFR'' in three places.

970.5204–2 [Amended]

■ 311. Section 970.5204–2 introductory text is amended by removing ''48 CFR''.

970.5204–3 [Amended]

■ 312. Section 970.5204–3 introductory text is amended by removing ''48 CFR''.

970.5208–1 [Amended]

■ 313. Section 970.5208–1 introductory text is amended by removing ''48 CFR''.

970.5209–1 [Amended]

■ 314. Section 970.5209–1 introductory text is amended by removing ''48 CFR''.

970.5215–1 [Amended]

■ 315. Section 970.5215–1 is amended by:
■ a. Removing ''48 CFR'' in the introductory text;
■ b. Removing the ''.'' at the end of clause paragraphs (d)(1) introductory text and (d)(3) introductory text and adding in its place ''—'';
■ c. Removing in paragraph (d)(1)(i), ''prior'' and adding in its place, ''Prior'';

■ d. Removing in paragraph (d)(1)(ii) ''not'' and adding in its place, ''Not'';
■ e. Removing in paragraphs (d)(3)(i) and (d)(3)(ii), ''of such'' and adding in its place, ''Of such'';
■ f. Removing in paragraph (d)(3)(iii) ''if'' and adding in its place, ''If''; and
■ g. Removing ''48 CFR'' in the introductory text for Alternate paragraphs I, II, III and IV.

970.5215–3 [Amended]

■ 316. Section 970.5215–3 is amended by:
■ a. Revising the date of the clause and the two alternates to read as set forth below;
■ b. Removing ''48 CFR 970.1504–5(c)(1)'' in the introductory text and adding in its place ''970.1504–5(b)(1)'';
■ c. Removing ''48 CFR 970.1504–5(c)(2)'' in the introductory text of Alternate I and adding in its place ''970.1504–5(b)(2)'';
■ d. Removing ''48 CFR 970.1504–5(c)(3)'' in the introductory text of Alternate II and adding in its place ''970.1504–5(b)(3)'';
■ e. Removing the ''.'' in clause paragraphs (a)(1) introductory text, (b)(4)(v) introductory text and Alternate II (e)(1) introductory text and adding in its place ''—'';
■ f. Removing ''232.1A'' in clause paragraph (c)(3)(i) and adding in its place ''231.1–2''; and
■ g. Removing ''in contracts awarded on a cost plus award fee, incentive fee or multiple fee basis'' in Alternate II introductory text.

The revision reads as follows:

970.5215–3 Conditional payment of fee, profit, and other incentives—facility management contracts.

* * * * *

CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES—FACILITY MANAGEMENT CONTRACTS (AUG 2009)

* * * * *

Alternate I (AUG 2009)

* * * * *

Alternate II (AUG 2009)

* * * * *

970.5215–4 [Amended]

■ 317. Section 970.5215–4 is amended by:
■ a. Revising the date of the clause to read as set forth below;
■ b. Removing ''48 CFR 970.1504–5(d)'' from the introductory text and adding in its place, ''970.1504–5(c)'';
■ c. Removing the ''.'' in paragraph (b), at the end of the introductory text of the *Shared Net Savings* definition, and adding in its place ''—'';
■ d. Removing the ''a'' at the beginning of paragraphs (b)(1) and (b)(2) of the *Shared Net Savings* definition and adding in its place ''A'';
■ e. Removing the ''.'' in paragraphs (c)(2) introductory text, (d) introductory text, and (e) introductory text and adding in its place ''—''; and
■ f. Removing ''rewardable'' and ''rewarded'' in paragraph (j) and adding in their places ''awardable'' and ''considered'', respectively.

The revision reads as follows:

970.5215–4 Cost reduction.

* * * * *

COST REDUCTION (AUG 2009)

* * * * *

970.5215–5 [Amended]

■ 318. Section 970.5215–5 introductory text is amended by removing ''48 CFR 970.1504–5(e),'' and adding in its place ''970.1504–5(d)''.

970.5217–1 [Amended]

■ 319. Section 970.5217–1 is amended by:
■ a. Removing ''48 CFR (DEAR)'' in the introductory text;
■ b. Removing the ''.'' in clause paragraphs (c) introductory text and (c)(9) introductory text and adding in its place ''—''; and
■ c. Adding ''(End of clause)'' after the clause 970.5217–1.

970.5222–1 [Amended]

■ 320. Section 970.5222–1 introductory text is amended by removing ''48 CFR''.

970.5222–2 [Amended]

■ 321. Section 970.5222–2 is amended by removing ''48 CFR'' in the introductory text; and removing the ''.'' in paragraphs (c) introductory text, and (c)(5) introductory text and adding in their places ''—''.

970.5223–1 [Amended]

■ 322. Section 970.5223–1 is amended by removing ''48 CFR 970.2303–2(a)'' in the introductory text and adding in its place ''970.2303–3(b)''; and removing the ''.'' in clause paragraph (c) introductory text and adding in its place ''—''.

■ 323. The section heading for 970.5223–3 is revised to read as follows:

970.5223–3 Agreement regarding Workplace Substance Abuse Programs at DOE sites.

* * * * *

970.5223–4 [Amended]

■ 324. Section 970.5223–4 is amended by removing ''48 CFR'' in the introductory text; and removing ''prime contractor'' in clause paragraph (c)(2), two occurrences and adding in its place, ''Prime Contractor''.

970.5228–1 [Amended]

■ 325. Section 970.5228–1 is amended by:
■ a. Revising the date of clause to read as set forth below;
■ b. Removing ''48 CFR'' in the introductory text.
■ c. Removing the ''.'' in clause paragraphs (e)(1), (h)(1) and (h)(2) and adding in its place a '';''; and
■ d. Removing ''unreimbursable'' in clause paragraph (k) and adding in its place ''non-reimbursable''.

The revision reads as follows:

970.5228–1 Insurance—litigation and claims.

* * * * *

INSURANCE—LITIGATION AND CLAIMS (AUG 2009)

* * * * *

970.5229–1 [Amended]

■ 326. Section 970.5229–1 is amended by removing ''48 CFR'' in the introductory text; and removing ''Insurance-Litigation'' in clause paragraph (b), last sentence, and adding in its place, ''Insurance—Litigation''.

970.5231–4 [Amended]

■ 327. Section 970.5231–4 introductory text and the Alternates I and II introductory text are amended by removing ''48 CFR''.

■ 328. The section heading for 970.5232–1 is revised and in the introductory text by removing ''48 CFR''.

The revision reads as follows:

970.5232–1 Reduction or suspension of advance, partial, or progress payments.

* * * * *

970.5232–2 [Amended]

■ 329. Section 970.5232–2 is amended by:
■ a. Removing ''48 CFR'' in Alternate I and in the introductory text of Alternates II, III, and IV;
■ b. Removing ''therefor'' in clause paragraphs (b) in the second and third sentences, and in clause paragraph (i) in the second sentence, and add in its place, ''therefore'';
■ c. Removing the ''.'' in clause paragraphs (e) introductory text, (e)(2) introductory text, and (e)(2)(iv) and adding in its place ''—'';
■ d. Removing the ''.'' in clause paragraphs (e)(1), and (e)(3)(i) and adding in its place a ''.'';

■ e. Removing the ‘‘,’’ in clause paragraph (e)(3)(ii);
■ f. Revising the last sentence of paragraph (e)(2)(iv)(B);
■ g. Removing the ‘‘,’’in clause paragraph (e)(3) introductory text and adding in its place ‘‘—’’; and
■ h. Adding ‘‘(End of clause)’’ after clause 970.5232–2, and before Alternate I.

The revision reads as follows:

970.5232–2 Payments and advances.

* * * * *

(e) * * *

(2) * * *

(iv) * * *

(B) * * * In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see Contract Clause, 48 CFR 970.5228–1, Insurance—Litigation and Claims);

* * * * *

970.5232–3 [Amended]

■ 330. Section 970.5232–3 is amended by:
■ a. Revising the date of the clause to read as set forth below;
■ b. Removing ‘‘48 CFR 970.3270(a)(2)’’, in the introductory text and adding in its place, ‘‘970.3270(a)(2)’’;
■ c. Removing in clause paragraph (d), last sentence, ‘‘ownership of records’’ and adding in its place, ‘‘Ownership of Records’’;
■ d. Removing ‘‘General Accounting’’ in clause paragraph (h)(3) introductory text and adding in its place ‘‘Government Accountability’’;
■ e. Removing the ‘‘:’’ at the end of clause paragraph (i)(1) introductory text and adding in its place ‘‘—’’;
■ f. Removing in the last sentence of clause paragraph (j), ‘‘970.5242–1’’ and adding in its place ‘‘48 CFR 970.5242–1’’ and removing ‘‘unallowable costs’’ and adding in its place ‘‘Unallowable costs’’; and
■ g. Removing in Alternate I, introductory paragraph, ‘‘48 CFR 970.3270(a)(2)(i),’’ and adding in its place, ‘‘970.3270(a)(2),’’; and adding ‘‘—Modifications’’ after ‘‘Data’’.

The revision reads as follows:

970.5232–3 Accounts, records, and inspection.

* * * * *

ACCOUNTS, RECORDS AND INSPECTION (AUG 2009)

* * * * *

970.5232–4 [Amended]

■ 331. Section 970.5232–4 is amended by:
■ a. Removing in the introductory text, ‘‘48 CFR 970.3270(a)(3),’’ and adding in its place, ‘‘970.3270(a)(3),’’;
■ b. Removing the ‘‘:’’ at the end of paragraph (b) introductory text and adding in its place ‘‘—’’;
■ c. Removing ‘‘contract,’’ at the end of clause paragraph (b)(1), and adding in its place ‘‘contract;’’;
■ d. Removing ‘‘agrees’’ at the end of clause paragraph (d) introductory text and adding in its place, ‘‘agrees—’’;
■ e. Removing ‘‘directives,’’ in clause paragraphs (d)(1) and (d)(2) and adding in its place ‘‘directives;’’;
■ f. Removing ‘‘to’’ at the beginning of clause paragraphs (d)(1), (d)(2), and (d)(3), and adding in its place, ‘‘To’’; and
■ g. Removing in Alternate I, ‘‘48 CFR 970.3270(a)(3)(i),’’ and adding in its place, ‘‘970.3270(a)(3)’’.

■ 332. The sections 970.5232–5, 970.5232–6, 970.5232–7 and 970.5232–8 are amended by removing in the introductory text, ‘‘48 CFR’’.

■ 333. The following sections are amended by adding at the end of each clause, ‘‘(End of clause)’’, 970.5217–1, 970.5232–2, 970.5232–5, 970.5232–6, 970.5232–7, and 970.5232–8.

970.5235–1 [Amended]

■ 334. Section 970.5235–1 is amended by removing ‘‘48 CFR 970.3501–4,’’ in the introductory text, and adding in its place, ‘‘970.3501–4,’’ and adding ‘‘(DOE)’’ after the first use of ‘‘Energy’’ in clause paragraph (a).

970.5236–1 [Amended]

■ 335. Section 970.5236–1 introductory text, is amended by removing ‘‘in 48 CFR 970.3605–2,’’ and adding in its place ‘‘at 970.3605–2,’’.
■ 336. Section 970.5242–1 is revised to read as follows:

970.5242–1 Penalties for unallowable costs.

As prescribed in 970.4207–03–70, insert the following clause:

PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)

(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that contractor—

(i) Was subject to a contracting officer’s final decision and not appealed;

(ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is—

(1) Expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97); or

(2) Determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The Contracting Officer may waive the penalty provisions when—

(1) The Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) The amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) The Contractor demonstrates to the Contracting Officer’s satisfaction that—

(i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Contractor’s submission for settlement of costs; and

(ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

(End of clause)

970.5243–1 [Amended]

■ 337. Section 970.5243–1 introductory text is amended by removing ‘‘48 CFR’’.

■ 338. Section 970.5244–1 is revised to read as follows:

970.5244–1 Contractor purchasing system.

As prescribed in 970.4403 insert the following clause:

CONTRACTOR PURCHASING SYSTEM (AUG 2009)

(a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor’s purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401–1. The Contractor shall maintain

file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR subpart 970.41.

(c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401–3.

(e) *Audit of Subcontractors.* (1) The Contractor shall provide for—

(i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402–3 and 48 CFR 31.205–26(e).

(f) *Bonds and Insurance.* (1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102–2(a) for all fixed-priced and unit-priced construction subcontracts in excess of $100,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $100,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102–2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than $25,000, but not greater than $100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102–1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225–1 and 48 CFR 52.225–9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of $100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at $100,000 or less.

(h) *Construction and Architect-Engineer Subcontracts.* (1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled ''General Design Criteria Manual.''

(3) *Prevention of Conflict of Interest.* (i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a ''turnkey'' subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402–3.

(j) *Contractor-Subcontractor Relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR part 45, 48 CFR part 945, the Federal Property Management Regulations, 41 CFR chapter 101, the DOE Property Management Regulations, 41 CFR chapter 109, and their contracts.

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(n) [Reserved]

(o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:

(1) Motor vehicles—48 CFR 908.7101
(2) Aircraft—48 CFR 908.7102
(3) Security Cabinets—48 CFR 908.7106
(4) Alcohol—48 CFR 908.7107
(5) Helium—48 CFR subpart 8.5

(6) Fuels and packaged petroleum products—48 CFR 908.7109

(7) Coal—48 CFR 908.7110

(8) Arms and Ammunition—48 CFR 908.7111

(9) Heavy Water—48 CFR 908.7121(a)

(10) Precious Metals—48 CFR 908.7121(b)

(11) Lithium—48 CFR 908.7121(c)

(12) Products and services of the blind and severely handicapped—41 CFR 101–26.701

(r) *Purchase versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—

(1) At time of original acquisition;

(2) When lease renewals are being considered; and

(3) At other times as circumstances warrant.

(s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) *Subcontract Flowdown Requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) Davis-Bacon clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed in 48 CFR 952.247–70.

(3) Counterintelligence clause prescribed in 48 CFR 970.0404–4(a).

(4) Service Contract Act clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904–1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504–3–1(b).

(y) *Legal Services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

(End of Clause)

970.5245–1 [Amended]

■ 339. Section 970.5245–1 is amended by:

■ a. Removing in the introductory text and Alternate I, ''48 CFR'';

■ b. Removing ''regulations'' in clause paragraphs (e)(2), three occurrences, and (i)(1)(i), second sentence, two occurrences, and adding in its place ''Regulations'';

■ c. Adding ''(DOE)'' after ''Energy'' in clause paragraph (e)(2); and

■ d. Removing the ''':'' in clause paragraphs (f)(1)(i) introductory text, (g) introductory text, (i)(1)(ii) introductory text, (j) introductory text, and Alternate I (j) introductory text and adding in its place ''—''.

PARTS 901, 903, 906, 915, 931, 933, 949, 951, AND 970—[AMENDED]

■ 340. The sections listed below are amended by adding the word ''Senior'' before the word ''Procurement'' in the following places:

■ a. Section 901.102 in the first sentence;

■ b. Section 903.203 in the second sentence;

■ c. Section 903.603(a);

■ d. Section 906.202(b)(1);

■ e. Section 906.304(c)(3);

■ f. Section 915.404–4–71–2;

■ g. Section 915.404–4–71–3(d), two places;

■ h. Section 915.404–4–72 paragraphs (a) introductory text and (b);

■ i. Section 931.205–32(b)(1) second sentence;

■ j. Section 933.103 in paragraph (f) and paragraph (i)(1) introductory text;

■ k. Section 933.103(k) in the third sentence;

■ l. Section 933.104 in paragraphs (b), (c), and (g)(1), in two places;

■ m. Section 949.111(c);

■ n. Section 951.103(b);

■ o. Section 970.0404–2 in paragraph (c) in the first sentence;

■ p. Section 970.1170–2;

■ q. Section 970.1504–1–1;

■ r. Section 970.1504–1–2 in paragraphs (c), (d), (f), (g), and (i)(1);

■ s. Section 970.1504–1–3(b)(1) in the last sentence;

■ t. Section 970.1504–1–3 in paragraphs (c)(3) and (4);

■ u. Section 970.1504–1–4 in paragraphs (b), (c)(2), and (c)(3);

■ v. Section 970.1504–1–7 in paragraph (e);

■ w. 970.1504–1–9(e) in paragraphs (e)(1)(v), (e)(2)(vii), (e)(3)(vi), (f) (in two places), and (i);

■ x. Section 970.1504–1–10;

■ y. Section 970.1504–5 in paragraphs (a) introductory text, (b)(1), (c), and (d);

■ z. Section 970.1706–1 in paragraphs (b) and (c);

■ aa. Section 970.2303–1 in paragraph (c)(1) in the first sentence;

■ bb. Section 970.3101–00–70(a); and

■ cc. Clause 970.5232–5 in paragraph (a).

PARTS 952 AND 970—[AMENDED]

■ 341. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
952.203–70(a) and (b)	''contractor''	''Contractor''
952.204–70 in eight places	''contractor''	''Contractor''
952.204–71(a) in five places	''contractor''	''Contractor''
952.204–72(a) two places, and (b)	''contractor''	''Contractor''
952.204–73(f) in two places	''contractor''	''Contractor''
952.204–76(a)(1) in three places, (a)(2) in two places, (a)(3), (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(2)(ii), (b)(3), (c) introductory text, (c)(3).	''contractor''	''Contractor''
952.204–76(a)(1), (a)(3), (b)(1) introductory text, (c) introductory text, (c)(3)(iii), (c)(3)(iv)	''contractor's''	''Contractor's''
952.204–77(a)(2), (b) introductory text, (d) in two places, (e)	''contractor''	''Contractor''
952.208–7(b)	''contractor''	''Contractor''
952.208–70 first paragraph, (2)	''contractor''	''Contractor''

Section	Remove	Add
952.209–72(a), (b) introductory text in three places, (b)(1)(i) in three places, (b)(1)(ii) in three places, (b)(1)(iii), (b)(2)(i) in two places, (b)(2)(ii), (b)(2)(iii), (c)(1) in two places, (c)(2), (d), Alternate I (f)(1) in two places, Alternate I (f)(2) in four places.	"contractor"	"Contractor"
952.209–72(b)(1)(i)	"contractor's"	"Contractor's"
952.217–70(a)	"contractor"	"Contractor"
952.217–70(a)(1)	"contractor's"	"Contractor's"
952.223–72 in four places	"contractor"	"Contractor"
952.223–75 in three places	"contractor"	"Contractor"
952.223–76(a)(2) in two places, (a)(3), (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(1)(vi), (b)(2)(ii), (b)(3), (c) first occurrence.	"contractor"	"Contractor"
952.223–76(a)(1), (a)(3), (b)(1), (c) introductory text, (c)(3)(iii), (c)(3)(iv), (d)(1), (d)(3)	"contractor's"	"Contractor's"
952.223–77(a)(1) in three places, (a)(2) in two places, (a)(3), (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(1)(vi), (b)(2)(ii), (c) introductory text first occurrence.	"contractor"	"Contractor"
952.223–77(a)(1), (a)(3), (b)(1) introductory text, (c)(1) introductory text, (c)(3) introductory text	"contractor's"	"Contractor's"
952.231–71(a) in two places, (b) in five places, (c)(1), (c)(2) in two places, (d) in three places, (e) introductory text, (g) introductory text, (g)(2), (h), (i) in three places, (j)(1) in two places, (j)(3), (k) introductory text in two places, (l) introductory text in three places, (l)(3) in four places.	"contractor"	"Contractor"
952.231–71(h) introductory text, (l)(3)	"contractor's"	"Contractor's"
952.235–71(a), (b) introductory text in three places, (b)(3), (c) introductory text, (d) introductory text, (d)(1) in three places, (d)(2), (d)(3), (d)(5) in four places, (g), (h).	"contractor"	"Contractor"
952.235–71(b)(3), (e)	"contractor's"	"Contractor's"
952.237–70 second paragraph of clause	"contractor"	"Contractor"
952.242–70(a)(1), (a)(2), (a)(3), (b), (e) introductory text in four places, (e)(1), (e)(2), (e)(3), (f)	"contractor"	"Contractor"
952.242–70(c)(5), (e)(1),	"contractor's"	"Contractor's"
952.250–70(c) in three places, (d)(1) in three places, (e)(1), (e)(2)(iii), (e)(2)(iv) introductory text, (e)(2)(vi), (f) in seven places, (g) in two places, (i), (j), (k), Note III in the second paragraph.	"contractor"	"Contractor"
952.251–70(a) in two places in the first sentence and the second sentence, (f)(1) in two places	"contractor"	"Contractor"
970.5203–1(a)(1) in three places, (a)(2), (a)(4) in two places, (b)	"contractor"	"Contractor"
970.5203–1(a)(3)	"contractor's"	"Contractor's"
970.5203–2(a), (b), (c) in two places, (d)	"contractor"	"Contractor"
970.5203–3(a), (b) in two places, (c) in four places, (d)	"contractor"	"Contractor"
970.5204–1(a), (b)	"contractor"	"Contractor"
970.5204–2(a) in two places, (b) in seven places, (c), (d) (e) in two places	"contractor"	"Contractor"
970.5204–2(b) in two places, (e)	"contractor's"	"Contractor's"
970.5204–3(a) in two places, (b), (b)(2) in two places, (b)(3), (b)(5)(iii) second occurrence only, (c), (d) in four places, (f) in two places, (g).	"contractor"	"Contractor"
970.5204–3(b)(2), (b)(5)(ii)	"contractor's"	"Contractor's"
970.5211–1(a) in three places, (b), (c), (d), (e) in two places, (f), (g) in two places	"contractor"	"Contractor"
970.5215–1(c)(2), (c)(3)	"contractor"	"Contractor"
970.5215–1(c)(1), (c)(3), Alternate III (f)	"contractor's"	"Contractor's"
970.5215–3(a)(1)(i), (a)(1)(ii), (a)(4), (b)(3)(i), (b)(3)(ii), (b)(3)(vi), (b)(4)(iv) in four places, (b)(4)(v)(A) in three places, (b)(4)(v)(B) in four places, (c) introductory text in two places, (d) introductory text, (d)(3) introductory text, Alternate I (a)(1), (a)(3), (b)(3)(i), (b)(3)(ii), (b)(3)(vi), Alternate II (e) introductory text, Alternate II (f)(3).	"contractor"	"Contractor"
970.5215–3(a)(1)(i), (a)(1)(ii), (b)(2), (b)(3), (b)(4)(ii), (b)(4)(iii), (c)(1), (d)(3)(iii), (d)(3)(iv), Alternate I (a)(1), Alternate I (b)(2), Alternate I (b)(3), Alternate II (f)(3).	"contractor's"	"Contractor's"
970.5215–4(b) in two places (definition of administrative cost and definition of design, process or method change), (i).	"contractor"	"Contractor"
970.5217–1(c)(8)	"contractor's"	"Contractor's"
970.5222–2(a), (b), (c) introductory text	"contractor"	"Contractor"
970.5223–1(b) introductory text in four places, (b)(1), (b)(7) in two places, (c) introductory text in two places, (d) in two places, (e) in two places, (f) in two places, (g) in four places, (h) in two places, (i) in two places.	"contractor"	"Contractor"
970.5223–1(b) introductory text, (e), (g), (h), (i)	"contractor's"	"Contractor's"
970.5223–2(d) introductory text in three places, (d)(iii)	"contractor"	"Contractor"
970.5223–4(a), (b), (c)(1) in two places, (c)(2) in two places, (c)(3)	"contractor"	"Contractor"
970.5223–4(b)	"contractor's"	"Contractor's"
970.5228–1(a) in two places, (b) in five places, (c)(1), (c)(2) in two places, (d) in three places, (e) introductory text, (g) introductory text, (g)(2), (h) introductory text, (i) in two places, (j)(1) in two places, (j)(3), (k) in two places, (l) introductory text in three places, (l)(3) in four places.	"contractor"	"Contractor"
970.5228–1(h) introductory text, (l)(3)	"contractor's"	"Contractor's"
970.5229–1(a) in six places, (b) in seven places, (c)	"contractor"	"Contractor"
970.5231–4(a) in six places, Alternate II (c) in two places,	"contractor"	"Contractor"
970.5232–1(a), (b)	"contractor"	"Contractor"
970.5232–1(a)	"contractor's"	"Contractor's"
970.5232–2(a), (b) in two places, (c) in three places, (d) in four places, (e) introductory text, (e)(1), (e)(2) introductory text, (e)(2)(i), (e)(2)(vi)(A), (e)(2)(vi)(B) in four places, (e)(2)(vi)(C) in two places, (e)(3), (e)(3)(i), (g), (h) in two places, (i) in two places, Alternate II (a), Alternate III (k) in four places, Alternate IV (k) in two places.	"contractor"	"Contractor"
970.5232–2(c), (e)(2)(i), (e)(2)(iv)(B), (h)	"contractor's"	"Contractor's"
970.5232–3(a) in four places, (b), (c), (d) in six places, (e), (f), (g), (h)(2) in two places, (i), (i)(1) introductory text, (i)(1)(iii), (i)(2), (i)(3) the first occurrence, (j) in two places, Alternate I (b).	"contractor"	"Contractor"

Section	Remove	Add
970.5232–4(a) in four places, (b) introductory text in two places, (b)(1), (c) in three places, (d) introductory text in two places.	''contractor''	''Contractor
970.5232–4(b) introductory text, (c) in five places	''contractor's''	''Contractor's''
970.5232–5(a), (b) in three places	''contractor''	''Contractor''
970.5232–5(a)	''contractor's''	''Contractor's''
970.5232–6 in eight places where the word ''the'' precedes the word ''contractor''	''contractor''	''Contractor''
970.5232–6 in two places	''contractor's''	''Contractor's''
970.5232–7 in four places	''contractor''	''Contractor''
970.5232–8	''contractor's''	''Contractor's''
970.5235–1(a), (b), (c), (d)	''contractor''	''Contractor''
970.5236–1 in two places	''contractor''	''Contractor''
970.5242–1(c)(2), (d) introductory text, (e)(1), (e)(3) introductory text	''contractor''	''Contractor''
970.5242–1(e)(3)(i),	''contractor's''	''Contractor's''
970.5243–1(a) in two places, (b)	''contractor''	''Contractor''
970.5245–1(b) in five places, (c), (d) in eight places, (e)(1), (e)(2), (f)(1)(i) introductory text, (f)(1)(ii) in three places, (f)(2) introductory text, (f)(3), (g) in two places, (g)(3), (i)(1)(i), (i)(2)(i), (i)(2)(ii) in three places where the word ''the'' precedes the word ''contractor'', (k).	''contractor''	''Contractor''
970.5245–1(c), (e)(1), (f)(1)(i)(A), (f)(1)(i)(B), (f)(2) introductory text, (g) introductory text, (i)(1)(i), (i)(1)(ii)(C), (i)(1)(iii), (j) introductory text the second use of the word, (j)(1), (j)(2), Alternate I (j) the second use of the word, (j)(1), (j)(2), (j)(3).	''contractor's''	''Contractor's''

PARTS 952 AND 970—[AMENDED]

■ 342. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
952.204–71(a)	''contracting officer''	''Contracting Officer''
952.204–76(a)(2), (b)(1) introductory text, (b)(2)(i), (b)(3)	''contracting officer''	''Contracting Officer''
952.208–70(2)	''contracting officer''	''Contracting Officer''
952.208–70(2)	''contracting officer's''	''Contracting Officer's''
952.209–72(b)(1)(i), (b)(1)(ii), (b)(2)(i) introductory text, (c)(1), (c)(2), (e) in two places, Alternate I (f)(2).	''contracting officer''	''Contracting Officer''
952.217–70(a) introductory text, (b)	''contracting officer''	''Contracting Officer''
952.223–72 in three places	''contracting officer''	''Contracting Officer''
952.223–76(a)(2), (b)(1) introductory text, (b)(2)(i), (b)(3)	''contracting officer''	''Contracting Officer''
952.223–77(a)(2), (b)(1) introductory text, (b)(2)(i), (b)(3)	''contracting officer''	''Contracting Officer''
952.231–71(a) in two places, (b) in five places, (c)(1), (c)(2), (c)(3) in two places, (d) in two places, (g)(2), (i), (j)(1), (j)(2), (l)(1).	''contracting officer''	''Contracting Officer''
952.231–71(d)	''contracting officer's''	''Contracting Officer's''
952.233–4(a)	''contracting officer''	''Contracting Officer''
952.233–5	''contracting officer''	''Contracting Officer''
952.235–70 in four places	''contracting officer''	''Contracting Officer''
952.235–71(b) introductory text in two places, (b)(3) in four places, (c) introductory text, (d)(5).	''contracting officer''	''Contracting Officer''
952.242–70(b) in two places	''contracting officer''	''Contracting Officer''
952.251–70(a), (f)(2)	''contracting officer''	''Contracting Officer''
970.5203–1(a)(4) in two places	''contracting officer''	''Contracting Officer''
970.5203–2(c) in two places, (d)	''contracting officer''	''Contracting Officer''
970.5203–3(a), (b) in two places, (c), (d)	''contracting officer''	''Contracting Officer''
970.5204–2(b) in five places, (d)	''contracting officer''	''Contracting Officer''
970.5204–2(b)	''contracting officer's''	''Contracting Officer's''
970.5204–3(a) in two places, (b), (d) in two places, (g)(1), (g)(2)	''contracting officer''	''Contracting Officer''
970.5215–1(b) in three places, (d)(1)(ii), (d)(3) introductory text, (e) in four places.	''contracting officer''	''Contracting Officer''
970.5215–1(c)(1)	''contracting officer's''	''Contracting Officer's''
970.5215–3 Alternate I (a)(3), Alternate I (b)(3) in two places	''contracting officer''	''Contracting Officer''
970.5215–3(b)(3)(v)	''contracting officer's''	''Contracting Officer's''
970.5215–4(a), (b) (definition of Shared Net Savings, paragraph (2)), (d) introductory text, (e) in two places, (f), (i).	''contracting officer''	''Contracting Officer''
970.5222–2(b), (c) introductory text in two places	''contracting officer''	''Contracting Officer''
970.5223–1(e) in three places, (g) in three places where the word ''the'' precedes the word ''contracting officer''.	''contracting officer''	''Contracting Officer''
970.5223–3(b)	''contracting officer''	''Contracting Officer''
970.5223–4(c)(1)	''contracting officer''	''Contracting Officer''
970.5228–1(a) in two places, (b) in five places, (c)(1), (c)(2), (c)(3) in two places, (d) in two places, (g)(2), (i), (j)(1), (j)(2), (l)(1).	''contracting officer''	''Contracting Officer''
970.5229–1(a) in five places, (b) in three places	''contracting officer''	''Contracting Officer''
970.5231–4 Alternate II (c) in two places	''contracting officer''	''Contracting Officer''
970.5232–1(a)	''contracting officer''	''Contracting Officer''

Section	Remove	Add
970.5232–2(a) in four places, (b) in two places, (c) in three places, (e), (e)(2)(iv)(B) in two places, (f), (g), (h) in two places, (i), (j), Alternate II (a) in three places, Alternate IV (k).	''contracting officer''	''Contracting Officer''
970.5232–3(c), (d) in two places, (e), (i)(1) introductory text, (i)(1)(viii), (i)(3), (i)(4), (j) in three places.	''contracting officer''	''Contracting Officer''
970.5232–4(a), (b)(1)	''contracting officer''	''Contracting Officer''
970.5232–7	''contracting officer''	''Contracting Officer''
970.5232–8	''contracting officer''	''Contracting Officer''
970.5236–1 in two places	''contracting officer''	''Contracting Officer''
970.5242–1(b) in two places, (d) introductory text, (d)(1), (d)(2), (e) introductory text.	''contracting officer''	''Contracting Officer''
970.5242–1(c)(2)(i), (e)(3) introductory text	''contracting officer's''	''Contracting Officer's''
970.5243–1(a) in two places	''contracting officer''	''Contracting Officer''
970.5245–1(b) in two places, (c) in two places, (d) in five places, (e)(1), (f)(1)(i)(B), (f)(1)(ii), (f)(2)(i), (f)(2)(ii), (g)(1), (g)(3), (i)(1)(i) in two places, (i)(2)(i).	''contracting officer''	''Contracting Officer''

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July 22, 2009

Part IV

Department of Housing and Urban Development

24 CFR Part 57

Section 108 Community Development Loan Guarantee Program: Participation of States as Borrowers Pursuant to Section 222 of the Omnibus Appropriations Act, 2009; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. 5326–I–01]

Section 108 Community Development Loan Guarantee Program: Participation of States as Borrowers Pursuant to Section 222 of the Omnibus Appropriations Act, 2009

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements section 222 in Division I of the Omnibus Appropriations Act, 2009, Public Law 111–8 (2009 Appropriations Act). Section 222 authorizes HUD, to the extent of Fiscal Year (FY) 2009 loan guarantee authority, to provide community development loan guarantees, under section 108 of the Housing and Community Development Act of 1974 (HCD Act), to states borrowing on behalf of local governments in nonentitlement areas (governments that do not receive annual Community Development Block Grants (CDBG) from HUD). Section 108 authorizes HUD to guarantee notes issued by such nonentitlement local governments or their designated public agencies supported by the respective state's pledge of its CDBG funds. Prior to the enactment of section 222, HUD lacked authority to guarantee notes issued by states on their behalf. State officials interested in applying for a loan guarantee commitment pursuant to this new authority should take note that HUD's authority to issue such commitments will expire on September 30, 2010 (and could be fully utilized by other borrowers before that date), unless the provision continues to be included in future appropriations acts. The interim rule, however, contains language that will make the provisions implementing this new authority continue to apply, in the event that provisions equivalent to section 222 are included in future appropriations acts. Because the provisions of section 222 expand, rather than replace, existing Section 108 authority, HUD will also continue to accept nonentitlement local government issuers' state-supported applications for loan guarantee commitments.

DATES: *Effective Date:* August 21, 2009.

Comment Due Date: September 21, 2009.

ADDRESSES: Interested persons are invited to submit comments to be considered in formulating the final rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0001.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7186, Washington, DC 20410; telephone number 202–708–1871 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. FAX inquiries (but not comments on this interim rule) may be sent to Mr. Webster at 202–708–1798 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Section 108 Community Development Loan Guarantee program provides local governments with access to long-term (up to 20-year) fixed-rate loans at relatively low interest rates to finance certain categories of eligible CDBG projects. Under section 108(a) of the HCD Act (section 108(a)), HUD enters into commitments to guarantee, and subsequently guarantees, promissory notes issued by units of general local government (or their designated public agencies). Under section 108(r) of the HCD Act, HUD, acting on behalf of these borrowers, arranges for the issuance of a series of trust certificates based on a large pool of such notes and engages underwriters (investment banking firms) to market and sell interests in the trust certificates to investors in a periodic, generally annual, public offering.

HUD guarantees the timely payment of the principal of and interest on the trust certificates and, under the provisions of section 108, the full faith and credit of the United States is pledged to honor the guarantee. Because of the federal guarantee, interest payable on the trust certificates and the underlying notes can be set at relatively low fixed rates; investors are willing to purchase interests in the certificates at such interest rates because of the security provided by the guarantee. Proceeds of the sale, minus certain underwriting and trust administration fees and costs, are advanced to the local government borrowers, who pay interest on a given year's principal installment at the fixed interest rate borne by the trust certificate of corresponding maturity.

To accommodate local government borrowers that need financing for projects in the months between the periodic public offering of fixed-rate trust certificates, HUD also guarantees promissory notes under section 108(a) that initially bear interest at rates that adjust monthly in relation to a reference short-term interest rate. Such local

governments then typically opt to have their notes pooled with other issuers' notes in the next public offering of fixed-rate trust certificates, at which time, under the terms of the notes, the interest rates on principal installments of particular maturities convert to the fixed rates borne by the trust certificates of corresponding maturities.

Contemporaneous with HUD's guarantee, local government borrowers enter into contracts with HUD in which they agree to use funds for eligible activities, to make the payments required under their notes, and to reimburse HUD for any payments made on their behalf. These obligations are secured by pledges of annual CDBG allocations—the local government's own allocation in the case of CDBG entitlement communities and, in the case of local governments in nonentitlement areas, the state's allocation. HUD is also authorized to require (and as a matter of policy does require) other security, such as interests in real property and pledges of local revenues, in addition to pledged CDBG funds. While HUD's guarantees to investors are backed by the full faith and credit of the United States, the local government borrower's obligations to HUD are payable only from pledged CDBG funds and any additional security furnished, and are not general obligations of the borrower secured by its full faith and credit (except to the extent that the borrower chooses to furnish such a pledge as additional security).

Historically, section 108(a) guarantee authority has been limited to the guarantee of notes or other obligations issued by eligible public entities, defined in section 108(o) of the HCD Act as ''any unit of general local government, including units of general local government in nonentitlement areas,'' or by public agencies designated by such eligible public entities. States have participated in the program by supporting nonentitlement local governments' applications to HUD for loan guarantee assistance and by pledging the State's CDBG allocations to secure the local government issuers' obligations. However, states have not been able to participate in the program as issuers (borrowers). This stands in contrast with the states' CDBG program under section 106 of the HCD Act (subpart I of part 570), under which HUD makes annual formula grants to the states, which in turn distribute funds to local governments in nonentitlement areas to carry out eligible activities.

II. The 2009 Appropriations Act and Section 222

Pursuant to section 108 of the HCD Act and the Federal Credit Reform Act of 1990, as amended, in order to authorize HUD to make commitments to guarantee, and guarantee pursuant to those commitments, subject to the loan limitation for section 108 during a given period of time, Congress appropriates funds, which are referred to as ''credit subsidy,'' to HUD for section 108 loan guarantees in an amount sufficient to cover the estimated long-term cost to the federal government, excluding administrative costs.

The 2009 Appropriations Act appropriates credit subsidy funds of $6 million to HUD for the section 108 loan guarantee program. These funds are available for obligation for loan guarantee commitments until September 30, 2010, subject to a loan limitation of $275 million (or such lower amount as may be required by the section 108 credit subsidy rate). If the entire FY 2009 section 108 credit subsidy appropriation is obligated in FY 2009, the principal amount of commitments issued cannot exceed $265,487,000.

One of the administrative provisions of the 2009 Appropriations Act, section 222(a), provides that these credit subsidy funds ''may be used to guarantee, or make commitments to guarantee, notes, or other obligations issued by any state on behalf of non entitlement communities in the state in accordance with the requirements of section 108 of the Housing and Community Development Act of 1974: *Provided,* That, any State receiving such a guarantee or commitment shall distribute all funds subject to such guarantee to the units of general local government in nonentitlement areas that received the commitment.''

III. This Interim Rule

HUD interprets section 222, in conjunction with section 108(a), as authorizing HUD to make a commitment to guarantee, and to subsequently guarantee, a note or other obligation issued by a state to the same extent (subject to the special provisions of section 222, discussed below) as a note or other obligation issued by an eligible public entity, if the commitment and guarantee are made pursuant to the loan guarantee authority provided in the 2009 Appropriations Act.

Certain provisions in section 108 of the HCD Act refer to guarantees made, or obligations guaranteed or eligible for guarantee, ''under'' or ''pursuant to'' section 108. HUD also interprets these statutory provisions, when read in conjunction with section 222, as extending to guarantees that are made, and obligations that are guaranteed or eligible for guarantee, pursuant to the additional authority provided in section 222. These include, but are not limited to, the following key statutory provisions:

1. Section 108(f), which provides that the full faith and credit of the United States is pledged to the payment of ''all guarantees made under this section'' and provides, ''Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.''

2. Section 108(r), which (as more particularly described in this preamble) authorizes HUD to guarantee the principal of and interest on trust certificates based on and backed by a trust or pool composed of ''notes or other obligations guaranteed or eligible for guarantee * * * under this section.''

This interim rule makes certain necessary revisions to HUD's section 108 regulations in 24 CFR part 570, subpart M, to: (1) Reflect HUD's interpretations of section 222 and section 108; (2) to implement several other statutory provisions that by their terms apply to guarantees ''under'' or ''pursuant to'' section 108; and (3) extend, generally, to the guarantees authorized by section 222 all of the statutory requirements of section 108, as required by section 222. One of the principal revisions to the regulations in 24 CFR part 570, subpart M, is to the definition of ''debt obligation.''

Existing § 570.702 defines the term ''debt obligation'' to mean: (1) A promissory note or other obligation issued by an eligible public entity (local government) or its designated public agency and guaranteed by HUD under subpart M, or (2) a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of subpart M by HUD, which is guaranteed by HUD under subpart M and is based on and backed by a trust or pool composed of notes or other obligations issued by public entities or their designated public agencies and guaranteed or eligible for guarantee by HUD under subpart M. Existing subpart M does not restate the note guarantee authority and trust certificate guarantee authority provided in section 108(a) and section 108(r); therefore, there is no specific provision of the current regulation that limits the scope of HUD's statutory guarantee authority to ''debt obligations'' as so defined.

However, there are other statutory provisions that are restated in the regulations, using the defined term ''debt obligation.'' So that these provisions do not exclude the guarantees authorized by section 222, the interim rule amends the definition of the term ''debt obligation.''

Specifically, the interim rule amends the definition of ''debt obligation'' to make clear that, in addition to the obligations that the term currently covers, debt obligation also encompasses a promissory note or other obligation issued by a state and guaranteed by HUD under subpart M. Additionally, ''debt obligation'' encompasses a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of subpart M by HUD, and which is guaranteed by HUD under subpart M and based on and backed by a trust or pool composed of notes or other obligations issued by states and guaranteed or eligible for guarantee by HUD under subpart M (either alone, or in combination with notes or other obligations issued by eligible public entities or their designated public agencies and guaranteed or eligible for guarantee by HUD under subpart M).

In addition to this revision of the definition of ''debt obligation,'' the interim rule adds a reference to ''state'' to several provisions of subpart M in which reference is currently made only to ''public entity'' (local government), where this is necessary to ensure that statutorily based provisions of the regulations cover the guarantees authorized by section 222. (See revisions to §§ 570.704, 570.705, 570.709, and 570.711.)

IV. Specific Provisions of This Interim Rule

This section highlights some of the more noteworthy provisions of the interim rule. As described in section V of this preamble, HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment. The Department, however, recognizes the value and importance of public input in the rulemaking process and is providing a 60-day public comment period. HUD welcomes comment on all aspects of the interim rule, but specifically solicits views on whether the regulatory changes will likely increase the participation by states in the section 108 program, given their new authority to participate in the program as issuers of obligations. All comments received on the interim rule will be considered in the development of the final rule.

Eligible Issuers

HUD interprets ''state'' in Section 222 to mean any state, as defined in the HCD Act that has elected to administer the CDBG program for its nonentitlement areas. The definition includes all of the states, or any instrumentality of a state approved by its Governor, except for the state of Hawaii. The state of Hawaii is excluded from the definition because it has elected not to receive an annual grant from HUD to administer a CDBG program for its nonentitlement areas, and, therefore, is unable to make the pledge of CDBG funds required under section 108. (The units of general local government in Hawaii's nonentitlement areas, which currently are Hawaii, Kauai, and Maui counties, receive annual CDBG grants directly from HUD and are eligible to apply for section 108 loan guarantee assistance on their own behalf.) The definition also includes the Commonwealth of Puerto Rico. (See existing § 570.3 and the language in new § 570.711(a) limiting eligible applicants to states that administer the CDBG program.)

Distribution to Local Governments

Section 222 provides authority to guarantee and make commitments to guarantee notes or other obligations issued by a state ''on behalf of non-entitlement communities in the State,'' and it requires that ''any State receiving such a guarantee or commitment shall distribute all funds subject to such guarantee to the units of general local government in nonentitlement areas that received the commitment.'' HUD is implementing these provisions of section 222 by means of two interrelated requirements that are added to the section 108 regulations in a new § 570.711.

First, a state applying for a loan guarantee commitment will be required to identify, in its application, the local governments that will be eligible to be assisted by the state with proceeds of loans guaranteed pursuant to the commitment. Should HUD approve the application and issue a commitment to the state, the local governments so identified will be deemed to be the local governments that ''received the commitment'' (and obligations guaranteed pursuant to the commitment will be deemed to be issued ''on behalf of'' those local governments) for purposes of section 222. States may elect to identify these local governments in either one of two ways: by naming one or more specific nonentitlement local governments eligible to be assisted (which may be desired when a state is applying for a loan guarantee to fund a particular, known local project or projects) or by indicating that all or a specified subset of the nonentitlement public entities in the state are eligible to be assisted and describing how applications will be selected for assistance. (See § 570.711(a)(1).)

Second, the state will be permitted to use guaranteed loan funds only to make grants and loans to the local governments identified in its application for activities eligible under § 570.703 of the existing section 108 regulations. Proceeds may be used directly by the state for payment of interest on the guaranteed obligation as described in § 570.703(c); for payment of issuance, underwriting, servicing, trust administration, and other costs as described in § 570.703(g); and for debt service reserves as described in § 570.703(k), because these uses are for the purpose of financing the local governments' activities. (See § 570.711(b).) These limitations on permissible uses of funds will be incorporated as a condition of the state's loan guarantee commitment pursuant to § 570.704(c)(4) of the existing regulations, and as a term of the loan guarantee assistance contract entered into pursuant to § 570.705(b).

Application Process

As noted above, the interim rule requires a state to identify the local governments eligible to be assisted through its loan guarantee application, either by naming particular eligible local governments or by indicating that all or a specified subset of the state's nonentitlement local governments are eligible and describing the state's application selection process. The interim rule requires states to make this required identification of eligible local governments by the exclusive means of including this information as a part of the CDBG method of distribution described in the action plan submitted by the state pursuant to 24 CFR part 91. In its action plan, the state will also be required to note the approximate amount of outstanding section 108 guaranteed obligations issued by the state and by its nonentitlement local governments, to identify the maximum amount of guaranteed loan funds for which the state will apply during the period covered by the action plan, and to describe the required pledge of the state's CDBG funds. If the state's CDBG action plan, as most recently submitted or amended when the state initially applies for a commitment, does not include this information, the state will be required to amend its action plan in accordance with 24 CFR part 91 to include such information prior to

applying for the commitment. (See § 570.711(a)(1).)

Other required elements of the State's application submission will not be required to be included in the state's CDBG action plan; namely, a proposed schedule for repayment of the loan that identifies the sources of repayment and a description of the activities to be funded and how such activities are eligible and meet national objective criteria. The rule gives states the option of either including a detailed description of activities for HUD review and approval at the time of its application for a commitment (which may be desired when a state is applying for a loan guarantee to fund a particular, known local project or projects), or instead submitting a description of the type or types of local government projects for which awards of grants or loans will be made, indicating how these types of projects will be eligible and how they are intended to meet national objective criteria. In the latter case, the state will be required to obtain HUD review and approval of a detailed activity-description before disbursing guaranteed loan funds to a local government for the proposed activity. This will accommodate states that may wish to apply for and receive a loan guarantee commitment (and, if desired and if permitted by HUD, receive a guarantee and escrow guaranteed loan funds) prior to selecting particular local governments' projects for assistance, while enabling the Department to carry out its responsibility to ensure that activities funded under section 108 are eligible and meet national objective criteria. (See § 570.711(a)(2)–(3).)

Consistent with part 58 environmental review procedures applicable to State-assisted units of general local government under the current regulations, units of general local government will be required to submit requests for release of funds and related certifications to the appropriate HUD Field Office (rather than to the state), as described in § 570.704(d) of the existing regulations. (See § 570.711(e).) HUD recognizes that some states may wish to require that units of general local government submit such requests and certifications to the state for initial review prior to submission to the appropriate HUD Field Office. The regulations in 24 CFR part 58 and 24 CFR part 570 do not prohibit states from imposing such a requirement.

Apart from these provisions regarding HUD review of activity eligibility and national objective and environmental review procedures, local governments to be assisted by a state will be subject to the requirements of the state CDBG program (see 24 CFR subpart I), including the citizen participation requirements in § 570.486(a) for local governments' applications to the state for assistance, and the requirements in § 570.606 related to displacement, relocation, acquisition, and replacement of low- and moderate-income housing. (See §§ 570.707(b), 570.710, and 570.711(d) and (e).)

Certification With Respect to Other Financing Efforts and Need for Guarantee

Section 108(a) provides, in relevant part, that ''A guarantee under this section [Section 108] may be used to assist a grantee in obtaining financing only if the grantee has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee.'' Consistent with this provision, HUD currently assures that this requirement is satisfied by requiring each local government to submit an appropriate certification when it applies for a commitment of loan guarantee assistance, as provided in § 570.704(b)(4) of the existing regulations. Because the intent of this provision of section 108 is to assure that assistance is genuinely needed in order to be able to carry out the eligible activity, and because the local government that is planning the eligible activity is in the best position to seek other financing for the activity and assess whether such financing can timely be obtained, for section 222 guarantees HUD is interpreting ''grantee'' in this provision to mean the assisted local government, not the state issuer. This interpretation is consistent with current practice: nonentitlement local governments will only be required to make the same certification that they are currently required to make when they apply to HUD for loan guarantee assistance. This interim rule does not introduce an additional certification by the state. Because states will have the option of issuing guaranteed obligations and escrowing proceeds before local governments and projects are selected for assistance, the interim rule gives states the option of obtaining the required certification from each assisted local government after HUD's guarantee, but before approving the local government's application for assistance. (See § 570.711(c).)

70/30 Allocation Provisions

Section 108(a) also provides, in relevant part, ''Of the amount approved in any appropriation Act for guarantees under this section [Section 108] in any fiscal year, the Secretary shall allocate 70 percent for guarantees for metropolitan cities, [and] urban counties * * * and 30 percent for guarantees for units of general local government in nonentitlement areas. The Secretary may waive the percentage requirements of the preceding sentence in any fiscal year only to the extent that there is an absence of qualified applicants or proposed activities from metropolitan cities, [and] urban counties * * * or units of general local government in nonentitlement areas.'' It is HUD's view that states' applications for guarantees and guarantees made pursuant to section 222, because they finance activities carried out by the States' nonentitlement communities, constitute applications ''from,'' and guarantees ''for,'' ''units of general local government in nonentitlement areas'' within the meaning of these provisions. Accordingly, states applying for loan guarantees on behalf of their nonentitlement communities will share the 30 percent allocation (to the extent it is not waived in a given year) with nonentitlement communities applying directly to HUD for loan guarantee assistance. (See revisions to § 570.709.)

Continuation of Authority in Future Legislation

The interim rule contains language that would continue the applicability of the requirements and procedures described above in the event that provisions equivalent to section 222 are included in future appropriations acts. (See the introductory sentence of § 570.711.)

V. Justification for Interim Rulemaking

HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' The Department finds that a delay in the effectiveness of this interim rule, in order to solicit prior public comment, would be contrary to the public interest and statutory direction.

Section 222 of the 2009 Appropriations Act directed HUD to promulgate regulations implementing the administration of funds, as specified in section 222 within 60 days of enactment of that 2009 Appropriations Act (May 11, 2009). Accordingly, it was

the intent and direction of Congress that the section 108 guarantees or commitments authorized by the 2009 Appropriations Act be promptly made available to states. Although HUD was unable to meet the statutory deadline, it has strived to issue the regulations as close as possible to May 11, 2009. To delay the effectiveness of this rule would delay the benefits that Congress sought be immediately available to states, and consequently to the public they serve.

The interim rule does not make significant changes to the section 108 program regulations. The interim rule primarily makes technical changes to the regulations to implement the authority, provided to HUD by section 222 of the 2009 Appropriations Act, to guarantee obligations issued by states on behalf of their nonentitlement communities. To the greatest extent possible, the interim rule maintains the long-standing requirements for section 108 loan guarantees, which are familiar to states and localities.

Given the limited scope, and technical nature, of the interim regulatory amendments, a delay for the prior solicitation of comments might unnecessarily delay the benefits of the new financing mechanism authorized by the 2009 Appropriations Act. HUD also notes that its authority to make loan guarantee commitments to states will expire on September 30, 2010, and it is therefore important to implement this new financing expeditiously, as directed by Congress in an effort to assure that FY 2009 section 108 loan guarantee authority will be fully committed before HUD's authority expires on September 30, 2010.

Although HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment, the Department recognizes the value and importance of public input in the rulemaking process. Accordingly, HUD is issuing these regulatory amendments on an interim basis and providing for a 60-day public comment period. All comments will be considered in the development of the final rule.

VI. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned control numbers 2506–0161, 2506–0117, and 2506–0085. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would implement new statutory authority to provide an additional, alternative route for states and their nonentitlement local governments to obtain financing for eligible community development projects. Specifically, the interim rule authorizes HUD to provide community development loan guarantees to states borrowing on behalf of local governments in nonentitlement areas. Therefore, the primary focus of the interim regulatory amendments is on the states, which are relatively large jurisdictions. Further, and as detailed in the preamble above, the interim rule, to the greatest extent possible, tracks the language of the authorizing statute. Accordingly, the interim regulatory text reflects statutorily mandated requirements that HUD does not have the discretion to modify. Where HUD has been granted the discretion to elaborate on the statutory requirements, it has built upon the existing requirements for section 108 loan guarantees, which are familiar to States and localities. Moreover, these amendments are technical, and procedural, relating to the distribution of funds to local governments and the procedures to be followed by states in applying for the loan guarantees authorized by the provision. Therefore, it is HUD's determination that these revisions impose no significant economic impact on a substantial number of small entities. The undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number for the state CDBG program is 14.228, and the CDFA program number for the section 108 loan guarantee program is 14.248.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community Development Block Grants, Grant programs—education, Grant programs—housing and community

development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, for the reasons described in the preamble, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for 24 part 570 continues to read as follows:

Authority: 42 U.S.C. 5300–5320.

■ 2. In § 570.481, revise paragraph (a)(2) to read as follows:

§ 570.481 Definitions.

(a) * * *

(2) *CDBG funds* means Community Development Block Grant funds, in the form of grants under this subpart and program income, and loans guaranteed under section 108 of the Act.

■ 3. In § 570.701, revise the definitions of ''borrower'', ''debt obligation'', ''guaranteed loan funds'', and ''state-assisted public entity'' to read as follows:

§ 570.701 Definitions.

Borrower means the public entity or its designated public agency or the State that issues debt obligations under this subpart.

Debt obligation means a promissory note or other obligation issued by a public entity or its designated public agency or by a State and guaranteed by HUD under this subpart, or a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of this subpart by HUD, which is guaranteed by HUD under this subpart and is based on and backed by a trust or pool composed of notes or other obligations issued by public entities or their designated public agencies or by States and guaranteed or eligible for guarantee by HUD under this subpart.

* * * * *

Guaranteed loan funds means the proceeds payable to the borrower from the issuance of debt obligations under this subpart and includes funds received by a nonentitlement public entity from a State under § 570.711.

* * * * *

State-assisted public entity means a unit of general local government in a nonentitlement area which is assisted by a State as required in § 570.704(b)(9) and § 570.705(b)(2) or pursuant to § 570.711.

■ 4. In § 570.704, revise paragraph (c)(3)(i)(D), the first sentence of paragraph (c)(4), and the first sentence of paragraph (c)(5) to read as follows:

§ 570.704 Application requirements.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) The public entity's or State's ability to furnish adequate security pursuant to § 570.705(b), and

* * * * *

(4) HUD will notify the public entity or State in writing that the loan guarantee request has either been approved, reduced, or disapproved. If the request is reduced or disapproved, the public entity or State shall be informed of the specific reasons for reduction or disapproval. * * *

(5) *Amendments.* If the public entity or State wishes to carry out or assist in an activity not previously described in its application or to substantially change the purpose, scope, location, or beneficiaries of an activity, the amendment must be approved by HUD. * * *

* * * * *

■ 5. In § 570.705, revise paragraphs (a)(2)(ii) and (g) to read as follows:

§ 570.705 Loan requirements.

(a) * * *

(2) * * *

(ii) *States and State-assisted public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the State and all State-assisted public entities in the State would thereby exceed an amount equal to five times the amount of the most recent grant received by such State under subpart I.

* * * * *

(g) *Issuance, underwriting, servicing, and other costs.* Each public entity or its designated public agency and each State issuing debt obligations under this subpart must pay the issuance, underwriting, servicing, trust administration, and other costs associated with the private sector financing of the debt obligations. Such costs are payable out of the guaranteed loan funds and shall be secured under paragraph (b) of this section.

* * * * *

■ 6. Revise § 570.709 to read as follows:

§ 570.709 Allocation of loan guarantee assistance.

Of the amount approved in any appropriation act for guarantees under this subpart in any fiscal year, 70 percent shall be allocated for entitlement public entities and 30 percent shall be allocated for States and nonentitlement public entities. HUD need not comply with these percentage requirements in any fiscal year to the extent that there is an absence of applications approvable under this subpart from entitlement public entities or from States and nonentitlement public entities.

■ 7. In § 570.710, revise the third sentence to read as follows:

§ 570.710 State responsibilities.

* * * Upon approval by HUD of an application from a State or a State-assisted public entity, the State will be principally responsible, subject to HUD oversight under subpart I of this part, for ensuring compliance with all applicable requirements governing the use of the guaranteed loan funds. * * *

■ 8. Add a new § 570.711 to read as follows:

§ 570.711 State borrowers; additional requirements and application procedures.

This section contains additional requirements and alternative application procedures for guarantees of debt obligations under section 108 of the Act pursuant to the additional authority provided in paragraph (a) of section 222 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009, Public Law 111–8; 123 Stat. 524 at 976 (Division I of the Omnibus Appropriations Act, 2009) (''section 222'' and the ''2009 Appropriations Act''). If any other federal law or laws are enacted after March 11, 2009, the effect of which with respect to loan guarantee authority provided in an appropriations act is equivalent to the effect of section 222 with respect to the loan guarantee authority provided in the 2009 Appropriations Act, the additional requirements and alternative application procedures in this section shall also apply to guarantees of debt obligations under section 108 of the act, pursuant to the additional authority provided in such other federal law or laws.

(a) *Applications by States.* Notwithstanding § 570.702 and § 570.704, states that administer the CDBG program (under subpart I of this part) may apply for loan guarantee assistance under this subpart, and such application shall consist of the following:

(1) A copy of the State's CDBG method of distribution in the action plan most recently submitted or amended pursuant to 24 CFR part 91. In addition to the requirements of 24 CFR part 91, such method of distribution must note the approximate amount of section 108 guaranteed obligations issued by the State and all nonentitlement public entities that are outstanding at the time of such submission or amendment, identify the maximum amount of guaranteed loan funds for which the State will apply during the period covered by the action plan, describe the pledge of grants required under § 570.705(b)(2), and identify the nonentitlement public entities in the State that may be assisted with such guaranteed loan funds (to satisfy this requirement, the method of distribution may identify one or more specific nonentitlement public entities that may be assisted, or may indicate that all or a specified subset of the nonentitlement public entities in the State may be assisted and describe how applications will be selected for assistance).

(2) Either:

(i) A description of each activity to be carried out with the guaranteed loan funds, including the specific provision of § 570.703 under which the activity is eligible and how the activity meets one of the criteria in § 570.208; or

(ii) An indication of the type or types of activities to be assisted, the provisions of § 570.703 under which such activities are eligible, and the criteria in § 570.208 intended to be met, in which case HUD shall require that the description referred to in paragraph (a)(2)(i) of this section be submitted to and approved by HUD before the State disburses guaranteed loan funds to a public entity for the activity.

(3) A schedule for repayment of the loan which identifies the sources of repayment.

(b) *Distribution to Local Governments.* Proceeds payable to a State from the issuance of debt obligations under this subpart may be used only for:

(1) Loans and grants to the nonentitlement public entities identified in the State's approved application for activities eligible under § 570.703; and

(2) The uses specified in paragraphs (c), (g), and (k) of § 570.703.

(c) *Certification of need.* Prior to approving a nonentitlement public entity's application for assistance, the State shall obtain a certification from such public entity conforming to § 570.704(b)(4).

(d) *Local government citizen participation requirements.* The presubmission and citizen participation requirements in § 570.704(a) and the third sentence of § 570.704(c)(5) shall not apply with respect to nonentitlement public entities' applications to a State for assistance under this section. Nonentitlement public entities shall comply with the provisions of § 570.486(a) with respect to such applications and such assistance.

(e) *Environmental review; displacement, relocation, acquisition, and replacement of housing.* Nonentitlement public entities assisted by a State under this section shall comply with § 570.704(d) and (e).

Dated: June 23, 2009.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E9–17326 Filed 7–21–09; 8:45 am]

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Federal Register

Wednesday,
July 22, 2009

Part V

The President

Proclamation 8396—Captive Nations Week, 2009

Federal Register
Vol. 74, No. 139
Wednesday, July 22, 2009

Presidential Documents

Title 3—

The President

Proclamation 8396 of July 17, 2009

Captive Nations Week, 2009

By the President of the United States of America

A Proclamation

Fifty years ago, President Eisenhower issued a call of solidarity to peoples across the world living under communist rule. This first Captive Nations Week Proclamation expressed concern that too many people lacked fundamental freedoms, and it affirmed that the people of the United States stood alongside those who yearned to be free. Since this declaration, more nations have chosen the path of self-determination and respect for basic human rights. Brave American men and women have contributed to this story, making great sacrifices while serving in our Armed Forces or working in Government, private industry, and other organizations.

The Cold War is now consigned to the history books, but the ideals that President Eisenhower proclaimed remain vibrant and inspiring today. Just as in years past, people still hope to have the freedom and opportunity to pursue their dreams. People, young and old, still yearn to speak their minds. Citizens still believe governments have an obligation to be honest and transparent, uphold the rule of law, and allow civic participation.

We regard these universal principles as guiding values, and we stand in solidarity with those who aspire to live by them—not only because it is right, but also because our Nation's fate is connected to that of other nations. In an interdependent world, instability, disease, and hardship abroad affect us here at home. Governments that are responsive to the concerns of their citizens can better tackle these challenges and contribute to a more secure, healthy, and prosperous world.

Nations must advance these values through example. At home and abroad, the United States strives to honor the principles enshrined in our Nation's founding documents.

The challenges of a new century require us to summon the full range of human talents to move all nations forward. The United States stands with all governments and peoples committed to unlocking the potential of their people, and to peace, the rule of law, and respect for all citizens.

The Congress, by Joint Resolution, approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week of July of each year as ''Captive Nations Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim July 19 through July 25, 2009, as Captive Nations Week. I call upon the people of the United States to reaffirm our commitment to all those seeking dignity, freedom, and justice.

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

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H.R. 1777/P.L. 111–39

To make technical corrections to the Higher Education Act of 1965, and for other purposes. (July 1, 2009; 123 Stat. 1934)

S. 614/P.L. 111–40

To award a Congressional Gold Medal to the Women Airforce Service Pilots ("WASP"). (July 1, 2009; 123 Stat. 1958)

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